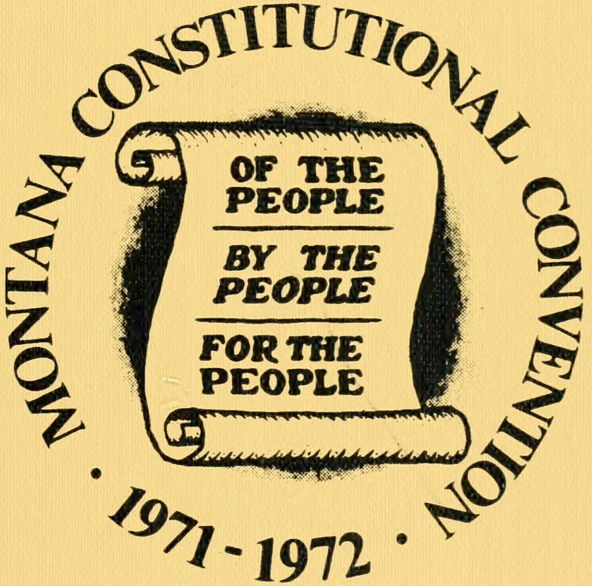
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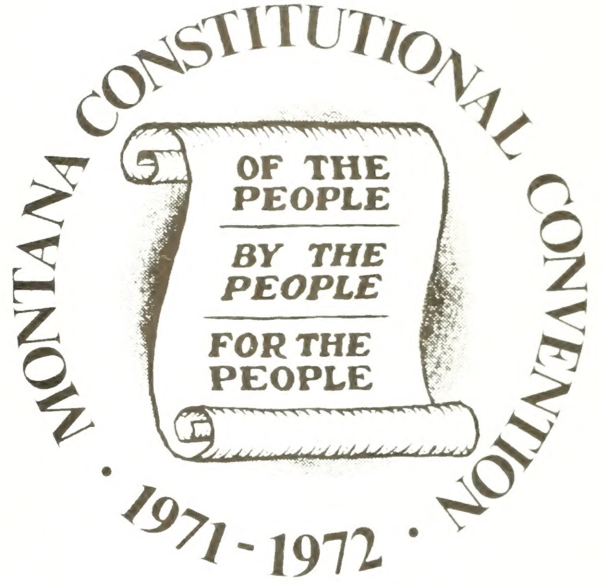
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**CHAIRMAN GRAYBILL:** All right, Etchart's motion's withdrawn.

**DELEGATE MURRAY:** Mr. Chairman, I move—

**CHAIRMAN GRAYBILL:** Mr. Murray, let me make this clear. What I like to do is we'd like to have two amendments, that's fine, and we don't mind a substitute and if the original one's a substitute, we'll take an amendment to the substitute, but we don't like to have substitutes on substitutes, whatever that means.

**DELEGATE MURRAY:** Well, I understand you but I disagree that that's what we had. I guess—

**CHAIRMAN GRAYBILL:** All right. Well, anyway, we've withdrawn Mr. Etchart's motion and we are now back on the motion to adopt subsection 3 and you may have the floor.

**DELEGATE MURRAY:** I move, as a substitute motion, that 10—Section 10, subsection 3, read as follows: "the sessions of the legislature, committee of the whole—"

**CHAIRMAN GRAYBILL:** Mr. Murray, I'm troubled and so is the clerk. Will you write it down for us?

**DELEGATE MURRAY:** I have it written. Shall I bring it forward?

**CHAIRMAN GRAYBILL:** Yes, will you send it up for us?

**DELEGATE MURRAY:** Fine.

**CHAIRMAN GRAYBILL:** Will the clerk read the proposed amendment?

**CLERK HANSON:** "Mr. Chairman, I move to amend Section 10, subsection 3, by deleting it in its entirety and adding in its place, 'the sessions of the legislature, committee of the whole, and all committee meetings and hearings shall be open unless the business is such as requires secrecy.' Signed, Murray."

**CHAIRMAN GRAYBILL:** Very well, you have heard the motion of Mr. Murray that the sessions of the Legislature, the Committee of the Whole, and all committee meetings and hearings shall be open unless the business is such as to require secrecy.

Mr. Heliker.

**DELEGATE HELIKER:** Will Mr. Murray yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Murray?

**DELEGATE MURRAY:** I yield.

**DELEGATE HELIKER:** Does the phrase, "all committees", include the conference committee?

**DELEGATE MURRAY:** I presume so, yes.

**DELEGATE HELIKER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** I move to amend the substitute motion.

**CHAIRMAN GRAYBILL:** What is it? Or write it down. You may come up here and write it down if you want to see what he wrote.

**CLERK HANSON:** (Reading) "Mr. Chairman, I move to amend the substitute motion made by Delegate Murray by deleting the words, 'unless the business is such as requires secrecy', and insert in lieu thereof the words, 'to the public'."

**CHAIRMAN GRAYBILL:** Very well, you've heard the substitute amendment of Mr. Heliker, the purpose of which is to take out the words, "unless the business is such as to require secrecy", and to add the words, "open to the public—make it open to the public." Now, we'll debate that issue.

Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. President, may I ask Mr. Murray a question?

**CHAIRMAN GRAYBILL:** Mr. Murray?

**DELEGATE MURRAY:** Yes.

**DELEGATE BUGBEE:** Mr. Murray, I fail to understand the basic difference why you would need this and why we can get along in the Constitutional Convention without a provision like this.

**CHAIRMAN GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Well it's a little hard to answer Mrs. Bugbee, and I'm a little torn in my thinking, and I suppose that the reason that I'm torn is that I came here with the idea and philosophy in mind of reducing our present Constitution to something which was a broad structure, flexible, and would last. I believe in the open meetings. I don't resist that premise at all or I'm sure that you would not have found it in the rules which I drafted preliminarily and gave to this Convention and which they so wisely adopted and which I think, incidentally, we are operating under beautifully. However I do not think, as a matter of practice that we should be telling the Legislature how it should run its affairs; and I think that each time we take a step toward doing so, we build in more resistance to the adoption of this Constitution.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** May I speak to Mr. Murray? Mr. Murray, it seems to me that what we are talking about is change and a changing time. The Constitutional Convention, it has been said before, belongs to the people. It's the people's business. It's the people's document. And it seems to be, by the very same token, that the Legislature is the people's representative. I fail to understand why what belongs to them should be kept from them, and who can make an arbitrary—I mean—to me it is absolutely an arbitrary decision to keep government's business from the people. That government belongs to them.

**CHAIRMAN GRAYBILL:** I don't think that was a question, Mr. Murray. (Laughter)

**DELEGATE MURRAY:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** I'll let you have the floor again Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, I think it requires a response for I think that I am being misinterpreted. I have never espoused any ideas in resistance or opposition to the matter of secrecy. I think that we should have open meetings. I simply rose to point out that I thought there was difficulty in the drafting of Section 10, subsection 3. I am now pleased with the amendment to my substitute motion, as proposed by Mr. Heliker, and I support it. And I think with that statement we should say hurrah.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** I rise in support of Mr. Murray's motion, as amended by Mr. Heliker. I think it's better than Section 10, as proposed by the committee, and I would ask the delegates to support it.

**CHAIRMAN GRAYBILL:** All right, the question is on—Mr. Etchart.

**DELEGATE ETCHART:** Mr. Chairman, I oppose Mr. Heliker's amendment because it simply puts us back where we started and completely negates the idea. I think that in Section 10 we were wise in adopting the language which says that the Legislature may make rules for its proceedings, and I think this body was very fortunate in being able to make rules for our proceedings. I am very happy with the open hearings and meetings. They've worked fine, but I don't think we should hamstring the Legislature with this language.

**CHAIRMAN GRAYBILL:** Mr. Heliker, do you want to close?

**DELEGATE HELIKER:** Yes, Mr. Chairman. We've had many arguments—

**CHAIRMAN GRAYBILL:** Wait a minute. Mr. Mahoney wants to speak, Mr. Heliker.

Mr. Mahoney.

**DELEGATE MAHONEY:** I am wondering if you're going to go out and open up the court of the State of Montana to when those judges get in their conference, this becomes public. I wonder if you'd like to go out here and open up the jury room, and this is what you'll do with this thing here if you go through with it. As far as impeachment's concerned, you're going into the jury room and you're going to put the press right in there. I just wonder how far you're going and I hope this Convention realize—I want to be fair to the Legislature and this is another branch of government, just as much as the court is; and if we're going to have open meetings, when we ever get to an impeachment—this is the thing. And in answer to my distinguished colleague over here, he was only talking about the setting up the procedure. This never got to the Senate. It was right on this body is where it stopped because they did not vote impeachment. But when you try the people, this is what I think you must have an exception in here for trying in the impeachment proceedings and before that Senate or the one house Legislature. That's all I have to say. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, I rise to support Mr. Heliker's motion, or amendment to Mr. Murray's motion. Mr. Murray said that one word, "proceedings", troubled him and I think he did an excellent job in clearing that up. He then used a word—the word, "secrecy"—and the whole phrase, "unless the business is such as to require secrecy", that makes me wonder just exactly who determines that, and when. Now let's pose a question. Let's say Mr. Miles Romney comes up here from his newspaper, goes to a committee seeking admittance on the assumption that all meetings are open. He starts to walk in and they say, "We're going to have a secret meeting." Now then Mr. Romney, as a good reporter, says "What is the secret meeting about?" Now, do they have to explain what the secret thing is that they don't want to be made public in order to make their case, or how does he know what the secrecy is? If they do not say what it is, then his agile mind can run rampant and all kinds of things may come out of it. If they tell him what the secret meeting is about, then it's no longer secret. (Laughter).

**CHAIRMAN GRAYBILL:** Mr. Choate.

**DELEGATE CHOATE:** Would Mr. Heliker yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Heliker?

**DELEGATE HELIKER:** I yield.

**DELEGATE CHOATE:** Mr. Heliker, since the only subject that seems to be very controversial here regarding the matter of secrecy appears to be impeachment, wouldn't it be in order for you to include in your amendment to Mr. Murray's motion that except as may be required during impeachment proceedings?

**DELEGATE HELIKER:** Have we—let me ask the Chair—have we covered impeachment yet? This is down the road, isn't it?

**CHAIRMAN GRAYBILL:** We haven't covered it yet, no.

**DELEGATE HELIKER:** I should suggest that if there is a real problem here, that we can take care of it when we get to the section on impeachment.

**CHAIRMAN GRAYBILL:** Mr. Heliker, do you have anything else to close?

**DELEGATE HELIKER:** Mr. Chairman, I would like to say that we've had many arguments already and we'll have many more before this Convention is over, about what is a constitutional provision, what is properly in the Constitution and what is not. And that's part of the argument before us now. But I don't think that anyone has ever questioned that it is a function of a Constitutional Convention to lay reasonable, in its opinion, restrictions upon the Legislature, and that is exactly what we are doing here. We are saying to the Legislature, "You shall not conduct the people's business behind closed doors. You shall not keep from the people the secrets that belong to the people. You shall let the people in and the people shall know." And that is what should come out of this Convention in my opinion.

**CHAIRMAN GRAYBILL:** Very well, the issue is on the amendment by Mr. Heliker to Mr. Murray's substitute motion which now reads as follows:

Mr. Romney.

**DELEGATE ROMNEY:** I call for a roll call vote.

**CHAIRMAN GRAYBILL:** Right, we'll have a roll call vote. "The sessions of the legislature, committees of the whole—committee of the whole, and all committee meetings and hearings shall be open to the public." That's the way it now reads. "The sessions of the legislature, committee of the whole, and all committee meetings and hearings shall be open to the public." All those in favor of that motion vote Aye on the voting machines. Opposed, vote No. I guess we're voting on Mr. Heliker's amendment, which is to strike out the words, "unless the business is such as requires secrecy", and add the words, "to the public." I guess we're properly voting on that so strike my first—my other sentence and let's put it this way—the question, then, is on Mr. Heliker's amendment to Mr. Murray's motion, which I just read. Mr. Heliker would strike out the words, "unless the business is such as requires secrecy", and would add the words, "to the public", to the sentence making it open to the public. Now, all in favor vote Aye on the voting machines and all opposed, vote Nay. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, 75 having voted Aye and 14—oh, we have a roll call. All right, take the machine.

Mr. Martin, for what purpose do you rise?

**DELEGATE MARTIN:** On the board, my vote isn't registered—on this board over here.

**CHAIRMAN GRAYBILL:** All right, we'll see if it's registering over here, Mr. Martin. Did Mr. Martin register? You voted Aye on the machine, Mr. Martin.

(The Reporter notes herein that the print-out on the vote tabulation was misaligned and Delegate Martin actually is shown as absent.)

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Nay |
| Artz | Aye |
| Ask | Aye |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Absent |
| Cross | Aye |
| Dahood | Excused |
| Davis | Aye |
| Delaney | Excused |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Absent |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Absent |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Absent |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Absent |

| | |
|---|---|
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CHAIRMAN GRAYBILL:** Will the clerk read the vote?

**CLERK HANSON:** Mr. Chairman, 75 delegates voting Aye, 14 voting No.

**DELEGATE REICHERT:** (Inaudible. Microphone not turned on.)

**CHAIRMAN GRAYBILL:** Is Mrs. Reichert recorded as voting Aye?

**CLERK HANSON:** Reichert is recorded as Aye.

**CHAIRMAN GRAYBILL:** Mrs. Reichert's recorded as Aye. Very well, 75 having voted Aye, and 14 voting No, the amendment passes. Question is now on Mr. Murray's substitute motion.

Mr. Heliker.

**DELEGATE HELIKER:** I want to call for a roll call.

**CHAIRMAN GRAYBILL:** You want a roll call vote. Very well. Mr. Murray, we've got plenty of seconds. All right, the question then is on Mr. Murray's substitute motion "that the sessions of the Legislature"—or as amended—"that the sessions of the legislature, committees of the whole, and all committee meetings and hearings shall be open to the public." All—so many as shall be in favor please vote Aye on the voting machines and those opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, please record the vote.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Absent |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Absent |
| Cross | Aye |
| Dahood | Excused |
| Davis | Aye |
| Delaney | Excused |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Absent |
| Harlow | Absent |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |

| | |
|---|---|
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 81 delegates voting Aye, 9 voting No, 2 excused, and 8 not voting.

**CHAIRMAN GRAYBILL:** Very well, 81 delegates voting Aye and 9 voting No, the substitute motion of Mr. Murray has prevailed as amended. Very well. Mrs. Bugbee, will you may I use you to make a motion that when this committee arises, the substitute motion of Mr. Murray shall be adopted?

**DELEGATE BUGBEE:** I so move.

**CHAIRMAN GRAYBILL:** Very well, members of the committee, you have before you the motion of Mrs. Bugbee that when this committee does arise and report, after having had under consideration subsection 3 of Section 10, that the substitute section as stated by Mr. Murray do—be adopted as amended. All in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**CHAIRMAN GRAYBILL:** Will the clerk read Section 4?

**CLERK HANSON:** "Subsection 4: Adequate public notice of committee hearings must be given." Mr. Chairman, subsection 4.

**CHAIRMAN GRAYBILL:** You have before you, members of the committee, subsection 4. What is your pleasure?

Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. President, I move that when this committee does arise and report, after having had under consideration Section 10, subsection 4, of the Legislative Committee report, I recommend that the same do pass. Mr. Chairman, this won't be quite so hard. This was modified from what the committee had considered. I just want to say that adequate would mean the type of public notice. It would mean TV or newspaper or posting and the amount of time—it would include both the type and the time that the Legislature would consider sufficient for public notice. In other words, it would be up to the public—to the Legislature, excuse me.

**CHAIRMAN GRAYBILL:** Is there discussion?

Mr. Brown.

**DELEGATE BROWN:** Mr. President, I move to delete all of Section 10, subdivision 4. It's ambiguous, it's legislative and it's part of their rules.

**CHAIRMAN GRAYBILL:** Mr. Brown has made a motion to delete subsection 4. Mr. Brown, do you want to speak any further?

**DELEGATE BROWN:** (Inaudible response)

**CHAIRMAN GRAYBILL:** Very well, is there discussion? Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman, part of us in the committee felt that this would henceforth be known as the lawyers' relief portion of the Constitution, if it's left in as it is. I can foresee all—untold suits brought as to what is adequate and what is not adequate. I appreciate the intent but we simply worked on it for a long time and we could not come up with a conclusion that would put a brief statement in the Constitution that would not furnish untold law suits in the future.

**CHAIRMAN GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, I rise to support Mr. Brown's motion for the same reasons stated by him and for the same reasons stated by my colleague, Mr. Nutting. The question that pops into my mind is to who determines what is adequate public notice. I think the matter is so serious that I think that were a Constitution adopted with this particular language, as indefinitive as it is, it might cast suspicion upon the validity of any legislation adopted by the Legislature. I think that it fails in two major respects: one, to define who determines the adequate notice; and two, to determine if no challenge is made to that notice, when the law automatically would become effective or, in other words, when the statute of limitations as to its challenge would take effect. And therefore I think the simple solution to the problem is to keep it much like we've had it in the present Constitution, and not have any such stricture placed herein.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, members of the Convention, I would like to point out that it doesn't do any good to have open meetings if people don't have notice of them, and so I think that this section goes right along with the other section. However, I agree with Dick Nutting that "adequate" is a lawyer's word and that "adequate" ought to be taken out of there. And when the opportunity presents itself after the other motions have been dealt with, I will move to have that word stricken from that section. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue now rises—Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, may I move a substitute?

**CHAIRMAN GRAYBILL:** Well, I'll hear it.

**DELEGATE HARPER:** That we say "at least"—instead of the word "adequate"—"at least 3 days' public notice of committee hearings must be given."

**CHAIRMAN GRAYBILL:** No, if you're going to make a motion like this, you're going to write it down. And if you want to write it down, bring it up here, we'll take it.

**DELEGATE HARPER:** But don't forget what I said while I'm coming up. (Laughter)

**CHAIRMAN GRAYBILL:** Give that to Mr. Harper.

Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, this is—

**CHAIRMAN GRAYBILL:** Now, just a minute, Mr. Harper. We have a problem. The Chair wants these motions in writing and the motion at present is Mr. Brown's motion to delete. Now, is this—you can't strike the word "adequate" from a motion to delete.

**DELEGATE HARPER:** I was moving to substitute this entire—

**CHAIRMAN GRAYBILL:** All right, in other words, you're moving a substitute motion whose language is the same as the present motion with some different words in it, is that right?

**DELEGATE HARPER:** Right.

**CHAIRMAN GRAYBILL:** All right, but that isn't what you wrote out.

**DELEGATE HARPER:** Well, that was my haste. I did not have it written out previously, Mr. Chairman, because at one time earlier in the session you stated that minor changes of words would not be required to be written out in detail.

**CHAIRMAN GRAYBILL:** Right, and I've changed that now and may I suggest to you, Mr. Harper—Well, the Chair has a right under Rule 58 to require a motion to be in writing and it's because these things get so complicated. And may I suggest to you a way out of this, Mr. Harper, and see what you think. The motion is to delete. The motion is not final and when the motion to delete is made, if it prevails, then you may bring in another motion for new language for Section 4. But in order—but to try and do it in the face of his motion to delete, we don't find out the sense of the body on the motion to delete and we get the sense of the body only on a half motion on another side. So, if you'll allow me, I'll rule you out of order and you may come back—if Mr. Brown's motion wins, you may come back and make another attempt at it. Okay?

**DELEGATE HARPER.** Yes.

**CHAIRMAN GRAYBILL:** And that attempt should be written up.

**DELEGATE HARPER:** My thought in doing this before the motion to delete was carried was that we not be deleting on one thing and have something else in mind.

**CHAIRMAN GRAYBILL:** And you may also, of course, do what you've done, and that is you may also explain any motion you want to make. The point is, it gets very complicated and so the Chair is going to rule that since your motion, which amends a motion to delete, does not make sense as it is, we'll move—we'll rule it out of order and we'll go ahead on the motion to delete and then you may come back with another motion if you want to.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** What is the motion before the assembly?

**CHAIRMAN GRAYBILL:** The motion before the assembly is Mr. Brown's motion to delete subsection 4.

**DELEGATE AASHEIM:** If that carries we have killed Section 10, subsection 4. There will be no opportunity for Mr. Harper to bring in his substitute motion.

**CHAIRMAN GRAYBILL:** Well, I'll ask the Rules Committee. It's not my understanding until we have finally voted on as and agreed that that's what the committee would do when it would rise. Mr. Aasheim. Mr. Murray, would you like to help me?

**DELEGATE MURRAY:** Yes, sir.

**CHAIRMAN GRAYBILL:** The motion is to delete Section 4. Then I have a possible motion to substitute another motion for that. If the motion to delete Section 4 prevails, isn't it possible to still have other language suggested for Section 4 until this committee votes on what it's going to do when it rises?

**DELEGATE MURRAY:** Yes.

**CHAIRMAN GRAYBILL:** Well, if the Rules Committee's right, Mr. Aasheim, you're wrong.

Mr. Aasheim.

**DELEGATE AASHEIM:** That is true later on.

**CHAIRMAN GRAYBILL:** No, he can do it right after this. In other words, we have not placed this motion in the language, the magic language, that makes it final and the motion is simply to delete. And having deleted, then we could take other amendments to subsection 4.

**DELEGATE AASHEIM:** I stand corrected. May I speak on the motion?

**CHAIRMAN GRAYBILL:** Yes, sir.

**DELEGATE AASHEIM:** I concur with the motion to delete. I wonder—we're trying to make an assembly—I mean a legislative body that is democratic. We are trying to have public hearings and we know the value of public hearings but if we put in this restriction that there must be adequate notice or any kind of notice, might the committee Chairman say, "Well, we won't bother with a public hearing if we're going to be restricted", so we're defeating our own purpose. I concur with the motion to delete. Let's not give these chairmen of these committees another handicap to overcome because we have had that in this session here. It has been very difficult to get adequate public notice because of change of schedules, so I would concur with the motion to delete.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** I just want to say, Mr. Chairman, that in the course of the hearings by the Executive Committee, where we had over 50 people off and on, we frequently found that when we needed something from an officer of the state who was otherwise engaged and then was free, we got him on short notice. The insertion of this 3-day idea or adequate or some other limitation is simply going to confound the whole process and delay it all. I think it would create such inefficiency and confusion that it would substantially destroy the real, true function of a group committee hearing. What it would be is, the Chairman or somebody would go privately and do this and report back and in effect the public function and the public information would be more hampered than developed. And I think, therefore, that we would be better off not to put this kind of humiliating handcuff on the legislative proceeding. Here's a case where we should have faith in our representatives we vote for every 2 years.

**CHAIRMAN GRAYBILL:** Mr. McKeon.

**DELEGATE McKEON:** Mr. Chairman, insomuch as I am a lawyer and probably will clandestinely support many lawyer relief bills on this floor, I support the motion to delete that in this case. It is a legal principle that for every wrong there is a remedy; and in this case if someone is aggrieved and feels that he has been wronged by not receiving adequate public notice, I question what his remedy would be. In the sublime, it might perhaps be a petition to declare unconstitutional the bill on which he feels he did not have adequate hearing. For this and many other legal reasons, I would support the motion to delete.

**CHAIRMAN GRAYBILL:** Mr. Romney

**DELEGATE ROMNEY:** Mr. Chairman, does not Delegate Harper have the privilege of moving a substitute motion?

**CHAIRMAN GRAYBILL:** Mr. Romney, he has the privilege of moving a substitute motion.

**DELEGATE ROMNEY:** Well, why doesn't he do it? (Laughter)

**CHAIRMAN GRAYBILL:** Well, let's put it this way. He hasn't done it right yet. I asked that it be in writing. And the motion before the house is one to delete, and the motion he sent up said substitute the word something else. Now you can't substitute a word in a deletion, and I will give him a chance to make his motion but he can't do it the way he did it. So help him out if you want to.

**DELEGATE ROMNEY:** (Inaudible)—but I think that he should be afforded the opportunity to write it in conformity to the rules and that it should take precedence over the pending motion to delete because it is a substitute.

**CHAIRMAN GRAYBILL:** I have a feeling he's writing it.
Mr. Roeder.

**DELEGATE ROEDER:** Mr. Chairman, I didn't realize that we were waiting for Mr. Harper. I put my own substitute motion up there in the form of an amendment.

**CHAIRMAN GRAYBILL:** All right, let's have Mr. Roeder's—may I see Mr. Roeder's substitute motion?

**DELEGATE ROEDER:** I don't know, inexperienced as I am in these matters, I don't know if I did it properly.

**CHAIRMAN GRAYBILL:** You have now by getting the floor and calling it to my attention. Let's see it. Well, let's stop and understand what we're doing here. We have a motion to adopt Section 4 by the committee member. Then we have a motion by Mr. Brown to delete Section 4. Now, the motion that's being considered then is the deletion motion and when you send me an amendment saying to add the word, "notice", after line 8 of page 5, there's nothing to add or subtract to in the motion to delete. Now, if you want to come up with some different language that substitutes for Mr. Brown's position of deleting, I'll be glad to take it. But there's no point in taking language which adds or subtracts words to lines in something that he's moved to delete. That's my only point.
Mr. Roeder.

**DELEGATE ROEDER:** Is it now impossible for me to ask you to regard the language and the punctuation I sent up there as a substitute motion for what Mr. Brown moved?

**CHAIRMAN GRAYBILL:** No, I can regard it that way but I am going to ask you to write it down and I have explained to Mr. Harper, as I'll explain to you, that no matter how this motion comes out you'll be given a chance to amend further. If it comes out that it wins, you may suggest language. If it comes out that it loses, you may amend the existing Section 4. But I will not let you amend something that says to delete because the deletion takes everything away. So you have to come in by substitute motion that's written out in full form in order to handle anything that's deleted. It's just the only simple way to handle it. You will not lose your right to make an amendment. Mr. Roeder.

**DELEGATE ROEDER:** Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Now, has Mr. Harper got some new language?
(No response)

**CHAIRMAN GRAYBILL:** Mr. Siderius.

**DELEGATE SIDERIUS:** We're just deleting the language in Section 4, aren't we?

**CHAIRMAN GRAYBILL:** That's right. Well, maybe Mr. Brown thinks we're deleting Section 4 but in any event, we're not through with Section 4 when we delete what's in there now, as far as you people are concerned in making other motions.

Mr. Brown.

**DELEGATE BROWN:** Mr. President, since there's going to be several other motions made, I wonder if I could now close?

**CHAIRMAN GRAYBILL:** All right. Mr. Champoux, do you want the floor?

**DELEGATE CHAMPOUX:** Yes, before he closes, if I may just interject a few comments. First of all, in reaction to Mr. Aasheim's comments, if I understood them right when he said that public notice would keep committee's chairmen from having a public hearing. Well, I think if this reasoning is to be followed then this is all the more reason why, at least as far as I can see, to indicate why we need adequate public notice. I'm not quite satisfied with that word "adequate" in terms of what it means. Secondly, in reacting to Mr. Garlington's comments—insofar as the Education and Public Lands Committee was concerned, governmental agency heads told us that they were very pleased with the fact that they had been given adequate notice. By that, I mean 2 to 3 days. And that they weren't told in just 2 minutes to come down and give a yearly review of their budget and so forth. So I'm against the deletion.

**CHAIRMAN GRAYBILL:** Mr. Brown, do you want to close?

**DELEGATE BROWN:** I now close.

**CHAIRMAN GRAYBILL:** Mr. Harper, I'm going to put your motion next no matter what happens. All right, the motion is on Mr. Brown's motion to strike the words: "Adequate public notice of committee hearings must be given". All those in favor of striking those words from Section 4 please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** All opposed, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it and the words are stricken.

Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, I move that Section 10, subsection 4, of the Legislative Article read as follows: "At least 3-day public notice of committee hearings must be given." May I speak to it?

**CHAIRMAN GRAYBILL:** Very well, Mr. Harper has now moved that subsection 4 of Section 10 read: "At least 3 days—3-day public notice of committee hearings must be given."

Mr. Harper.

**DELEGATE HARPER:** When this idea first came up in our committee, there was a good deal of enthusiasm for the idea of putting in some definite statement like this. Those who were for putting in something definite like 3 days' or 5 days' public notice were talked out of the idea because, it was said, that we do not want to restrict the Legislature to a particular number of days. And so we sought to come up with some kind of wording that would insist that adequate public notice of committee hearings be given and we came up with what now seems to be an unfortunate term. Perhaps we should have stayed with the idea of a definite number. Now, this is exactly what we did in Rule 38 of the Constitution Convention. Rule 38 mandates that we give 3 days' notice of public hearings. These are the rules under which we are operating this Convention and everybody says this has been a wonderful thing. People have had adequate public notice, people have been able to get here, they know what the hearing's going to be about, and they've been well advised. If a person lives in Glendive, he still is a part of the State of Montana even though he's a long way from here, and he ought to have adequate public notice. Three days in our kind of transportation and communication probably is adequate. I would like to call attention of this body to the fact that several other states put day limits into their constitutions. Nebraska, for example, has 5 days before public hearings. This, of course, a part of the whole movement to free up the Legislature in terms of time limits to hear the public and to do its legislating with the public involved. With the idea that better legislation in which the public has been involved all along will be the end of the process. This is why I move now this definite term, "3 days", so that we can clearly establish whether or not we want to have anything at all.

**CHAIRMAN GRAYBILL:** Mr. Roeder, now that there's language on the floor, do you want to amend it by putting in the words—by changing it?

**DELEGATE ROEDER:** Yes, sir, but I'm dumbfounded as to how to go through the procedures of writing it out. (Laughter) May I just explain my position, Mr. Chairman?

**CHAIRMAN GRAYBILL:** Certainly.

**DELEGATE ROEDER:** Thank you, sir, and may I comment on what Mr. Harper has just said because what language I wish to propose is in response to his. Is that permissible, sir?

**CHAIRMAN GRAYBILL:** Yes, what you want to say is that "Adequate public notice as defined by the legislature" replace the words, "3-day public notice."

**DELEGATE ROEDER:** Yes, sir.

**CHAIRMAN GRAYBILL:** And you just amend his and now we've got language to amend; but when we're deleting, there's no language to amend.

**DELEGATE ROEDER:** Well, may I make my amendment now?

**CHAIRMAN GRAYBILL:** Yes, sir, you may. Do you want to?

**DELEGATE ROEDER:** Okay, I should like to amend Mr. Harper's proposal by deleting any reference of "3 days" and having the entire subsection 4 read as follows: "Adequate public notice, as defined by the rules of the Legislature comma, of committee hearings must be given period".

**CHAIRMAN GRAYBILL:** Very well, Mr. Roeder has made an amendment to Mr. Harper's amendment that "Adequate public notice as defined by the rules of the legislature—"

**DELEGATE ROEDER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** "—of committee hearings must be given."
Mr. Roeder.

**DELEGATE ROEDER:** May I just comment to that briefly? If I understand Mr. McKeon properly, he's disturbed about the legal side of this and I think this was some of the comment over here about this being a lawyer's relief bill, and I don't wish to support anything that would do that. I don't think the bar needs relief. (Laughter) But, I think by putting this clause in we would, to borrow one of Mr. Aronow's principles, be indicating to the Legislature in the future our moral position; that we should like to have them do the best they can in the way of making these things public, and at the same time avoiding the legal situation that Mr. McKeon referred to by making it a self-enforcing thing for the Legislature. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, it just seems to me the vice of trying to write anything into the Constitution is apparent because if you write something in, it has to mean something. And if it gives you a legal right, you have a right to enforce it. And just let me give you one illustration. Two committees here have been run differently. Inferentially, Mr. Champoux has disapproved of the way I ran the Executive Committee. I know he didn't mean to. I didn't give any notice. I just got up and said the committee would meet after the session. I interpreted the rule to mean public hearing when we were going to ask the public to come in. We had a lot of investigatory work to do. The meeting was open up there. Everyone could have come in. Everybody did from time to time. Now, would it not be an anomalous situation for someone to come into court and to say, because you had a boob like Joyce as the Chairman of the Executive Committee, that House Bill 13 is unconstitutional. Now, you're just pressing too far, if I might suggest. When the evil doesn't balance the good, why not leave it out. Why not trust the Legislature that they will give notice, and why compound difficulties. What if I'm even more devious than that. What if, for example, I am against House Bill 13 and all of my committee is for it, and 99 people in the Legislature are for it. But because I am a know-it-all I just don't give adequate public notice of a committee hearing, and the bill passes the House. And Cedor Aronow comes down and said he didn't get adequate public notice when we met on adjournment on Tuesday when we considered this matter, and therefore the bill is unconstitutional. I've already agreed with Cedor that we're going to do this. Just can't you see the vice and the viciousness and the harrassment that will enter into the realm. Let's leave well enough alone. Let's trust the Legislature. Let's be reasonable people. We've adopted that the committees must be open, and if they are open let us trust the Legislature that they will give these people an opportunity [to] be heard, and let's not do more harm than good.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** I, too, feel that this could be too binding. We set up a legislative hearing right here in this body even though it was a 3-day notice. It was changed from the evening to the afternoon. Many people came to testify. There was no meeting when they came. This could happen and it will happen in a Legislature. There's no doubt about it. If this is something that should be left out, again I say, when in doubt leave it out.

**CHAIRMAN GRAYBILL:** Mr. Campbell.

**DELEGATE CAMPBELL:** Mr. Chairman, I rise in opposition to the amendment which states in effect that adequate public notice will be given as determined by the Legislature. I think that this is, in essence, meaningless. I think that when you do put something in here, and I appreciate the intent that we do want to give adequate public notice. I think everyone feels that the notices given by this Convention were more than adequate. I think that when you do put something like this in a Constitution you are running a real risk that if you state a certain day at some further point in time someone may question whether or not the entire legislation was constitutional or not. I don't feel that the Legislature should be bound by this. I have complete faith that the new Legislature will give adequate public notice, that they will go into this area, and I don't feel this should be placed in this Constitution now. I would favor deletion of the entire amendment. Thank you very much.

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman, I would like to reassure Mr. Joyce he would have to give adequate notice. But no place in the Constitution does it say he'd have to have a hearing, so he's all right.

**CHAIRMAN GRAYBILL:** All right, the issue is on Mr. Roeder's amendment that subsection 4 read: "Adequate public notice, as defined by the rules of the legislature, of committee hearings must be given." All in favor of Mr. Roeder's—yes, Mr. Martin.

**DELEGATE MARTIN:** Roll call, please.

**CHAIRMAN GRAYBILL:** Roll call? All in favor of Mr. Roeder's amendment that adequate public notice, as defined by the rules of the Legislature must be given, please indicate by voting Aye on the voting machine; those opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Please take the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Absent |
| Cross | Nay |
| Dahood | Excused |
| Davis | Nay |
| Delaney | Excused |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Absent |

| | |
|---|---|
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Absent |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Absent |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 19 delegates voting Aye, 71 voting No.

**CHAIRMAN GRAYBILL:** 71 delegates having voted No, the motion fails. We're back on Mr. Harper's motion that at least 3 days' public notice of committee hearings must be given.

Mr. Cate.

**DELEGATE CATE:** I have a motion before the Chair that I would like to move at this time which I think will resolve the entire situation. The problem seems to be with two things: the word, "adequate"—what does it mean? Nobody knows what it means, and that would be subject to judicial interpretation on every bill. Secondly,—

**CHAIRMAN GRAYBILL:** Let me read your motion, Mr. Cate, so they know what you're talking about. Mr. Cate proposes a substitute motion for Mr. Harper's motion. The substitute motion shall—states: "Public notice of committee hearings must be given."

**DELEGATE CATE:** Secondly, I think the 3-day limitation is unreasonable. That would prohibit a Chairman, if some expert came into town, from having a hearing from that expert. He would have to give 3 days' notice. I think it's unworkable and unrealistic. By simply stating that public notice of committee hearings must be given, we've established the principle that we're trying to establish. And that is that the public be informed of committee hearings; and I would trust the Legislature to give them sufficient time and opportunity to testify. And I would so move that Section 10, subsection 4 be amended to provide—to strike the word, "adequate", so it reads: "Public notice of committee hearings must be given."

**CHAIRMAN GRAYBILL:** Mr. Cate's substitute motion is: "Public notice of committee hearings must be given."

Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. Chairman, could I ask Mr. Cate a question, please?

**CHAIRMAN GRAYBILL:** Mr. Cate?

**DELEGATE CATE:** Certainly.

**DELEGATE BABCOCK:** Is posting a notice out here on the bulletin board a public notice?

**DELEGATE CATE:** It could be, yes. Announcing a committee hearing from the floor would be public notice.

**DELEGATE BABCOCK:** Is that adequate public notice?

**DELEGATE CATE:** Well, that's the word we're trying to get away from.

**DELEGATE BABCOCK:** Well I mean, would that be sufficient?

**DELEGATE CATE:** I think the Legislature would have the right under this provision, as I've moved to amend it, to make rules for public notice but I don't—and I think that's where it ought to be, with the Legislature.

**CHAIRMAN GRAYBILL:** Mr. McDonough—oh, pardon me, Mrs. Babcock, are you through?

**DELEGATE BABCOCK:** May I ask another question? Would there be a difference between a meeting and a hearing?

**DELEGATE CATE:** Yes, there would be.

**DELEGATE BABCOCK:** And only the hearings would be noticed?

**DELEGATE CATE:** That's correct.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** Mr. President, I resist the amendment on the grounds that, even though we have "adequate" out of there, we're back in the position of defining the word, "public", and we're defining the word, "notice". And once again you get back to the point that it's much better to leave this, as to what notice the committees shall give, to the rules of the Legislature itself and not try to define these words. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Well I would like to close.

**CHAIRMAN GRAYBILL:** Well, we're on Mr. Cate's motion at the moment. Your motion has been substituted for and unless Cate fails, we're not on yours yet, but you may speak.

**DELEGATE HARPER:** Thank you, Mr. Chairman. Lest you think that I just got a hairbrained idea from somewhere and I'm stubbornly holding onto it, may I call your attention to the fact that I'm sorry we don't have a roll call on what we did with the rules because as I remember it, we unanimously passed Rule 38 at this Convention. Now, I would just ask you to read that if you want to. I won't take time to read the whole thing but it says, "which may not be less than 3 days before the time of the hearing." We have been operating this entire Constitutional Convention under this limitation. Now, then, if—Iwould like seriously to ask these lawyers a question. Since so many committee chairmen have risen to say that they just couldn't possibly abide by this 3-day rule if they were in the Legislature, and that they have constantly gone against it during this Convention. In my interpretation I don't think they have. Is somebody going to be able to go to the Supreme Court with the idea that this Constitution that we are proposing is illegal, because we have violated this same rule, we have heard again and again. Now, I don't think we have. I think we have given 3 days' notice, public notice, for our public hearings. Now, I realize that Mr. Romney said one time in our committee meeting that a committee meeting may at any time degenerate into a hearing. And this is true because we talk to people or we have people to come in and visit about it and so forth. This is at the point of public meetings that the committee calls, announcing what they are going to deal with, inviting the public to come in. Two things are apparent. One thing is the committee is not forced to have this kind of hearing, but this is saying that if they do announce a public hearing, they can't get away with the business as I have often seen it in the legislatures in the past few years, of getting a notice or being aware at 7 o'clock in the morning that a meeting was going to be—a public hearing was going to be held at 9:00 or 12:00 that noon; or having a call from somebody in Glendive saying, "We heard this was going to happen, could you go up and represent us on such-and-such a cause". We are talking about a real vital part of our whole legislative process when we're talking about public hearings, and so I don't think this is something that's a little wayside matter. It's something that we ought to give this real serious consideration and I'm glad to see that we are.

**CHAIRMAN GRAYBILL:** Mr. Davis

**DELEGATE DAVIS:** Mr. President, we must have two separate legislatures we're talking about. One we just gave unlimited power to in Section 6 to meet continually for 2 years if they want, to call themselves back into session without prescribing whether it took a majority, two-thirds, or what it was. And another Legislature now that we don't trust, on the next page, to even be able to make their own rules, like they permitted us. We must also have two groups of voters—that intelligent group of voters that elected us to come up here and legislate and occasionally do something constitutional—(Laughter)—and the set of voters that are going to vote the legislators in that we can't trust. It's almost unbelievable.

**CHAIRMAN GRAYBILL:** Mr. Brown.

**DELEGATE BROWN:** Will Mr. Harper yield to a question?

**CHAIRMAN GRAYBILL:** Delegate Harper?

**DELEGATE HARPER:** I will.

**DELEGATE BROWN:** Delegate Harper, you want to lock into the Constitution that the Legislature for the 50 or 60 years must give a 3-day notice. You say our rules are adequate. Do you realize that Rule 74, we can suspend all rules as to notice, under our rules, but you would not give that to the Legislature?

**DELEGATE HARPER:** The Legislature will be here doing people's business. Every bill they pass will become a public law. I think this is part of the whole process of making the process open so the people have a right to know. Not only have a right to know what's going on, have a right to express their opinion, and I think as a part of good legislative process somewhere in there ought to be this process of finding out. And public hearings is a good way to do this, particularly on controversial issues. A good many of the state constitutions have locked in day limits and I am suggesting that we should here.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Cate's amendment—substitute amendment—that public notice of committee hearings must be given. All those are in favor of Mr. Cate's substitute amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** All opposed, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and so ordered. We're now back on Mr. Harper's amendment about whether or not 3-day public notice of committee hearings must be given. Is there further discussion?

(No response)

**CHAIRMAN GRAYBILL:** Mr. Harper, do you want to close?

**DELEGATE HARPER:** I'd like to call for a roll call vote.

**CHAIRMAN GRAYBILL:** Very well, we will have a roll call vote on the proposition of whether 3-day public notice of committee hearings must be given. That's the text that would prevail if the motion prevails—3-day public notice of committee hearings must be given for subsection 4 of Section 10. So many as are in favor of that, please vote Aye. So many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Please tally the votes.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Absent |
| Brazier | Aye |
| Brown | Nay |

| | |
|---|---|
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Nay |
| Cate | Absent |
| Champoux | Aye |
| Choate | Nay |
| Conover | Absent |
| Cross | Aye |
| Dahood | Excused |
| Davis | Nay |
| Delaney | Excused |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Absent |
| Erdmann | Nay |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Absent |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 21 delegates voting Aye, 67 voting No.

**CHAIRMAN GRAYBILL:** 67 delegates having voted No and 21 Aye, the motion fails. At the moment, then, we are without a subsection 4. Is there any further amendments to consider?

Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, I wonder if it wouldn't be in order to make a motion that when this committee does rise and report, after having had under consideration Section 10, subsection 3, that it recommend the same be not adopted.

**CHAIRMAN GRAYBILL:** If you'll change that to subsection 4, I'll go along with you.

**DELEGATE MURRAY:** Four, excuse me.

**CHAIRMAN GRAYBILL:** Very well, the motion is on the motion of Mr. Murray that when this committee does arise and report that it shall report that there shall be no subsection 10(4). All in favor of that motion say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.

**DELEGATES:** (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it and so ordered. Mr. Clerk, will you read subsection 5?

**CLERK HANSON:** "Subsection 5: The legislature may establish interim committees which may meet and exercise all legislative authority delegated to them." Subsection 5, Mr. Chairman.

**CHAIRMAN GRAYBILL:** You now have before you, members of the committee, subsection 5 of Section 10.
Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. President, I move that when this committee does arise and report, after having had under consideration Section 10, subsection 5, of the Legislative Committee report, I recommend that the same do pass. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** I'm going to read the comments to this. The committee believes that the Legislature has the power to establish interim committees under this proposed article, especially under Section 6 which makes the Legislature a continuous body, which we have already done today. This section is included, however, because of the problem past Montana legislatures have had in establishing the Legislative Council. The committee wishes to include this section to remove any doubt about legislative authority in this area. Mr. Chairman, this section simply allows the Legislature to operate as they do now.

**CHAIRMAN GRAYBILL:** Very well, is there discussion?
Mr. Mahoney.

**DELEGATE MAHONEY:** Would Delegate Bugbee answer a question?

**CHAIRMAN GRAYBILL:** Mrs. Bugbee?

**DELEGATE BUGBEE:** Yes.

**DELEGATE MAHONEY:** I might be a little worried. In line 11, I believe it is, "all legislative authority delegated to them." Now, do you want to go quite that far in this delegation of authority? Legislative authority is getting quite strong there.

**DELEGATE BUGBEE:** I'm really boggled by the lawyers by now. Mr. Loendorf, would you answer that, please?

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** I was going to say, sometimes known as "Loendorf".
(Laughter)

**DELEGATE LOENDORF:** Mr. Chairman—

**CHAIRMAN GRAYBILL:** But always spelled "L-O-E-N-D-O-R-F". (Laughter)

**DELEGATE LOENDORF:** Right. I believe if we take a look at the Supreme Court cases which involved the Legislative Council, we find legislative authority to mean not only the ability to pass laws, but the ability to investigate, do research, et cetera. At least the Supreme Court interpreted this to be such. I do not believe that by this section we delegate or could delegate the ability to pass laws to an interim committee, if that was the question.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Might I ask him another question?

**DELEGATE LOENDORF:** I yield.

**DELEGATE MAHONEY:** I'm bothered in this point that they might decide to let a small group appropriate money and I wonder—this is legislative authority.

**DELEGATE LOENDORF:** Am I on?

**CHAIRMAN GRAYBILL:** Mr. Mahoney, you have the floor. Are you asking a question or making—

**DELEGATE MAHONEY:** Yes, I asked a question.

**CHAIRMAN GRAYBILL:** —of Mr. Loendorf—Loendorf—Lindbergh—
(Laughter)

**DELEGATE LOENDORF:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** I would not interpret the language here, although I admit it's open to interpretation, that this would allow an interim committee to exercise any law-passing ability, whether it be for appropriations or otherwise.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** As a substitute motion, and this is not for killing, I would like to pass consideration until we could get an interpretation of that point. I'm just asking to pass consideration of it at this time, and I'm sure that we will be meeting again Tuesday on this section and I'd like to have this cleared.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** I have an interest in this matter, and I do not particularly oppose the motion to pass consideration, but it's just possible that we could proceed. The matter of the wording was called to my attention, also, by the committee and at their request some further legal research was done on the meaning of those words. Certainly the Constitution in other sections provides the methods by which bills may be enacted into laws, and the methods by which moneys can be appropriated, and those provisions of the Constitution would control. So it would be impossible to interpret these words "a delegation of legislative authority", to counteract and override those specific rules in the Constitution dealing with those specific matters. Furthermore, it would be impossible for the Legislature to delegate to any individual or group of individuals outside of legislators themselves the authority to exercise any legislative authority, because it's implicit in the entire Constitution and in the wording that we have under consideration, that it is only the legislative body which may legislate. So that, while I do not oppose this motion, if Delegate Mahoney and others wish that more time be given and a more detailed report, perhaps a legal brief be written and presented, we can do this. But if you are possibly satisfied that the words do not create a danger that some unknown group of individuals could suddenly become a subrosa legislative body, or that the legislators themselves would delegate to a smaller number than their entire number the authority to do what the Legislature must and only Legislature can do, then I think we're on safe ground. The purpose for the provision is to protect the use of legislative interim committees. As you perhaps may or may not know, there have been three test cases in our Montana Supreme Court on this question. In two of them the Supreme Court held that the interim committees were invalid, unconstitutional, and they violated several different sections of the present Constitution. And then in the third case it was held that the present type of Legislative Council was a constitutionally created body and could function as it does. There has been no test cases yet about the postaudit committee which the Legislature has since then created, and perhaps there never will be a test case on it. But committees of that type and anything similar to them are in danger of being challenged. And there is a possibility, with a change of memberships on the courts, and without a clear statement in the Constitution that such committees may function, that they would again be held to be unconstitutional.

**CHAIRMAN GRAYBILL:** Now the Chair is taking the position, Mr. Mahoney, that your substitute motion to pass 10-5 is made, but we're discussing it.

Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman, I'd like to have Mr. Mahoney—and I share his concern—but I want—this is in answer to it—look on page 20, Section 10. It says, "a majority of the membership of the legislature constitutes a quorum to do business." Then, if we turn to Section 11, page 23, it says, "a bill shall become law upon a majority vote of the members present." I wonder if that doesn't answer your question?

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President, all that I am bothered about is the word, "legislature", in there. This is the word that is worrying me. Maybe I'm wrong. I'd liked to have had the time to investigate. I'm not going to belabor a point. If the committee wants to go on, well and good; but I understand that I have a delegate that is offering to amend it and I will withdraw my motion, Mr. Chairman, in that—in this—

**CHAIRMAN GRAYBILL:** Well, just a minute. You may withdraw your motion if you want, but Mr. Berg's next.

Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I'll renew the motion to withdraw; that is, to pass.

**CHAIRMAN GRAYBILL:** To pass.

**DELEGATE BERG:** And my purpose in that is this. I have perhaps the misfortune to have written the Legislative Council Article that we now work with. I also defended that case in the Supreme Court. I am somewhat familiar, I think, with some of the problems that the other interim committees encountered in the court, and I am most apprehensive about the word, "all legislative authority". I think that word, "all", coupled with the word, "legislative", is a very impressive delegation or possible delegation of legislative power. I do think the committee should seriously reconsider this.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman, I'd like to rise to a point of order. I did send an amendment to the Chair, and I'm a little confused as to the procedure here which takes precedence.

**CHAIRMAN GRAYBILL:** Well, at the moment, we have—the substitute motion of Mr. Mahoney was withdrawn, but then Mr. Berg renewed the substitute motion to pass 10(5). Now, do you want to make a motion?

**DELEGATE HARBAUGH:** Well, I believe that my motion to amend could have, or should have intervened between the withdrawal of Mr. Mahoney's motion and the other substitute.

**CHAIRMAN GRAYBILL:** Perhaps it should have. I didn't get your eye and I had already gotten his eye and so I recognized him next. Now—why don't you explain what you would do if—

**DELEGATE HARBAUGH:** If I was in order, I have a—

**CHAIRMAN GRAYBILL:** —you had a chance and then we'll vote.

**DELEGATE HARBAUGH:** If I was in order, I have an amendment which I think would clarify the language that is of concern.

**CHAIRMAN GRAYBILL:** Why don't you explain your proposal?

**DELEGATE HARBAUGH:** Would the Chair please read the amendment?

**CHAIRMAN GRAYBILL:** Mr. Harbaugh's amendment would have the section read: "The legislature may establish interim committees which may meet and exercise all legislative—"

**DELEGATE HARBAUGH:** No, strike "all legislative".

**CHAIRMAN GRAYBILL:** "—may exercise—"

**DELEGATE HARBAUGH:** "—authority delegated to them".

**CHAIRMAN GRAYBILL:** "—authority delegated to them by the legislature."

**DELEGATE HARBAUGH:** Yes. I'd like to move that.

**CHAIRMAN GRAYBILL:** "May exercise authority delegated to them by the legislature."

**DELEGATE HARBAUGH:** I would move that if it is in order.

**CHAIRMAN GRAYBILL:** I think it will simplify matters if we decide whether we're going to pass it or not. There's not much point in doing it if we are going to pass it anyway, so we'll continue with Mr. Berg's motion to pass. Is there any further discussion?

(No response)

**CHAIRMAN GRAYBILL:** All right, so many as are in favor of Mr. Berg's motion to pass subsection 5 of 10, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. Will you please use the voting machines. All those in favor of passing it, vote Aye. Those against passing it vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

**DELEGATE MURRAY:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, I rise to explain my vote. The hour is late and I'm about to move that the committee rise, report progress, and ask leave to sit again. So I think that if we pass this for the day we will get to that quicker.

**CHAIRMAN GRAYBILL:** Well, the Chair's already closed the vote and 40 having voted Aye and [illegible] having voted No, the motion fails. Now, Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh wants to make his amendment. His amendment is that the section now read: "The legislature may establish interim committees which may meet and exercise authority delegated to them by the legislature."

Mr. Harbaugh.

**DELEGATE HARBAUGH:** Well, I believe the motion has been discussed quite thoroughly, or the item has; and it seems to me that this language makes it clear that the interim committee only has the authority delegated to it by the Legislature and that it is not authorized to legislate, which seems to be the primary concern.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** I would support the amendment.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** I am still apprehensive as to exactly what this means and I am unwilling to accept Mr. Harbaugh's conclusions and opinions on this. I should like the time to at least reread the cases that were involved in the other interim committees, because I would not want to see these interim committees demolished by the courts because of the failure to use adequate language at this time. I am only asking for precaution, not in any sense to kill this because, well, I'm the author of one of them.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Would the gentleman, Mr. Berg, yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Berg?

**DELEGATE BERG:** I yield.

**DELEGATE SCHILTZ:** Mr. Berg, it impresses me that if we had this new provision in the Constitution it would take precedence over the bases for which the old decisions—or, I'm going to say old decisions were written, would it not?

**DELEGATE BERG:** I'm only concerned primarily with the extent of the delegation. You'll recall that the first section of the Legislative Article vests all legislative power in the Legislature. Now I think we have improved it when we have, in a sense, said we're not going to delegate that legislative power; but whether by saying we delegate such authority as the Legislature may deem appropriate, I'm still wondering whether that may or may not be considered an invalid delegation of power that the Supreme Court might strike down.

**CHAIRMAN GRAYBILL:** Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman. I may have gotten tired sitting here and missed something, but in Section 6 we passed that this is a continuous body for 2 years. Now, I have a couple of questions I wish that somebody would answer for me. Number one, if this is true, aren't the committees that are appointed by that Legislature in functioning, or able to function, all during that period? And the second one is, if this is true, why do we need interim committees? Personally, the reason that I ask these questions is that in over the years I've seen many legislative interim committees set up that were between the House and the Senate and these kind of things, and they agreed on very many beautiful solutions to our problems, but the next time that the Legislature met, they threw all of that in the wastebasket and started out anew, and I'd like to get this clarified.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, as a member of the Legislative Committee, Mr. Berg and Erv, here, have raised some serious questions that I think ought to be considered by our committee in more detail. And if it is in order, I would like to move at this time to recommit this section to our committee for further consideration. Is that in order?

**CHAIRMAN GRAYBILL:** That's in order.

**DELEGATE CATE:** To pass it for the day? I would then move to pass it for the day.

**CHAIRMAN GRAYBILL:** Now, wait a minute. Are you going to let them rule, or are you going to let me rule?

**DELEGATE CATE:** I'll let the Chair rule. The Chair's the boss.

**CHAIRMAN GRAYBILL:** Your motion to recommit is in order.

**DELEGATE CATE:** Could I have a—point of order?

**CHAIRMAN GRAYBILL:** We're getting it written down, Mr. Cate. All right, the issue now is on Mr. Cate's motion to recommit subsection 5 of Section 10 to the Legislative Committee. Is there discussion?

Mr. Cate.

**DELEGATE CATE:** Point of order. If we recommit it can we bring it back Monday or Tuesday or do we have to let it lay on the table?

**CHAIRMAN GRAYBILL:** Now, that's going to be up to you and your Chairman when you're going to meet, but if you recommit it, you will bring it back sometime, I hope. The motion need not say when, Mr. Cate.

**DELEGATE CATE:** All right, I'll leave the motion stand as it is then.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman, I resist the motion to recommit. If it passes, I shall call a meeting tomorrow at 9 o'clock.

**CHAIRMAN GRAYBILL:** Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, if the recommit passes, doesn't it then require that whatever subsequent action is taken will require 48 hours' notification before it can be redetermined?

**CHAIRMAN GRAYBILL:** It does unless we, as a body, wish to waive that rule as to that part that comes back.

**DELEGATE FURLONG:** Then I would stand opposed to the recommit motion.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** As a substitute motion, I'll ask—or I'll move that we pass Section 10-5 for the day.

**CHAIRMAN GRAYBILL:** Well, the Chair takes the position that we just had a vote on that and I think we ought to let these people's motions be decided so I'm going to rule that motion out of order. Mr. Cate, we're still on your motion to recommit.

**DELEGATE CATE:** In light of Mr. Berg's motion, I withdraw my motion.

**CHAIRMAN GRAYBILL:** All right, that's withdrawn. All right, now we're on Mr. Harbaugh's amendment that "the legislature may establish interim committees which may meet and exercise authority delegated to them by the legislature."

Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, I've been trying to say something intelligent all day and haven't had much luck. I'd like to try it now, and I would move to amend Mr. Harbaugh's motion by striking the last three words, "by the legislature". I think the first part of the sentence already gives the Legislature that power. It would then read: "The legislature may establish interim committees which may meet and exercise authority delegated to them."

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Furlong's motion to strike three words, "by the legislature", from the end of Mr. Harbaugh's amendment.

Mr. Joyce.

**DELEGATE JOYCE:** May I ask Mr. Furlong a question?

**CHAIRMAN GRAYBILL:** Mr. Furlong?

**DELEGATE FURLONG:** Yes

**DELEGATE JOYCE:** Mr. Furlong, would you mind withdrawing your motion and we'll take this thing up on Monday so that we don't have to haggle this thing tonight, and you could still make it on Monday—Tuesday?

**DELEGATE FURLONG:** I'm glad you changed it Tuesday. Yes, I'll withdraw. I just want to get it settled.

**DELEGATE JOYCE:** Mr. Harbaugh, would you mind withdrawing your motion subject to the right to renew it on Tuesday?

**DELEGATE HARBAUGH:** I would withdraw my motion.

**CHAIRMAN GRAYBILL:** Mr. Joyce, do you want to make a motion?

**DELEGATE JOYCE:** I make a motion that we pass Section...Well—I move that the committee rise and report progress.

**CHAIRMAN GRAYBILL:** Mr. Joyce, your motion is in order. Mr. Murray.

**DELEGATE JOYCE:** (Inaudible)...now withdraw my motion and defer to Mr. Murray. I don't know what.

(Laughter)

**CHAIRMAN GRAYBILL:** Now the Chair will recognize Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, at last. I move the committee rise and report progress and ask leave to sit again.

**CHAIRMAN GRAYBILL:** Very well. Now the motion to rise and report progress takes precedence and does effectively solve Mr. Joyce's problem of cutting off the debate on this matter tonight. And Mr. Murray you beg leave to sit again, and do you beg leave to sit again on Tuesday morning? Is that what you mean?

**DELEGATE MURRAY:** That is right.

**CHAIRMAN GRAYBILL:** Very well, you've heard Mr. Murray's motion that this body rise and report progress and beg leave to sit again on Tuesday morning. So many as shall be in favor of that motion say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, Nay

**DELEGATES:** (No response)

**CHAIRMAN GRAYBILL:** So ordered Now, we'll be in—just a moment, we'll do that.

**PRESIDENT GRAYBILL:** The Convention will be in order. Now we're going back on Order of Business 10 but—Mr. Swanberg, for what purpose do you rise?

**DELEGATE SWANBERG:** I was wondering if it would be in order at this time, Mr. President, to leave a thought with the Legislative Committee on an item that we may have overlooked in subsection 3 of Section 10.

**PRESIDENT GRAYBILL:** Well, Mr. Swanberg, let us report to the body here and then after we've reported I'll recognize you. Mr. Clerk, would you please read the committee's report.

**CLERK HANSON:** "February 19, 1972. Mr. President: We, your Committee of the Whole, having had under consideration Report Number 3 of the Committee on Legislative, recommend as follows: Delegate Aasheim as Chairman of the Legislative Committee noted minor corrections in his committee report. That the bicameral and unicameral proposals be sent to Style and Drafting as a dual proposal for submission to the electorate. That Section 4 be amended in lines 21 and 22, page 3, by deleting the following: (quote) comma, and a resident of the district from which he seeks election for at least 6 months (end quote) period. Amendment failed 30 to 61 on roll call vote requested by Foster, with sufficient seconds. That on roll call vote requested by Cate with sufficient seconds, Aasheim's amendment as follows: (quote) insert a period after (quote word) year (end quote) on line 21, page 3 and add the following (quote) other residency qualifications may be provided by law (end quote) failed to carry by the following vote: Ayes: 28; Noes: 68; absent or not voting: 4. That Section 4 be amended on line 20 after the words, 'shall be a', delete the following: 'qualified voter. He shall be a'. That Kelleher's amendment on roll call vote requested by Foster with sufficient seconds failed by [the] following vote: Ayes, 27; Noes, 68; absent or not voting, 5. Kelleher's amendment was as follows: In line 21, page 3, insert after the word, 'resident', the following: 'of the county or counties'. And in line 22, page 3, by striking between the words, 'month' and 'preceding', the word, 'next'. That Section 4 be adopted as amended. Cate moved that Section 4 be reconsidered. Chairman Graybill ruled Delegate Cate out of order. Cate challenged the ruling of the Chairman. By vote the Chair's rule was sustained. That Section 5 of the minority report, page 56, be adopted. That subsection 2 of the majority proposal on Section 5 be retained with this amendment: (quote) after the word, 'legislative', insert 'executive and judicial' (end quote). That the minority report of Section 5 as amended be adopted. At 12:00 noon the committee recessed until 1:00 p.m. Afternoon session—on roll call vote requested by Delegate Bugbee with sufficient seconds, Section 6 of the minority proposal failed to be adopted by the following votes: Ayes, 35; Noes, 60; excused, 2; absent or not voting, 3. On roll call vote requested by Delegate Harper with sufficient seconds, Section 6 of the majority proposal of the Legislative Committee was adopted by the following vote: Ayes, 70; Noes, 24; excused, 2; absent or not voting, 4. That further consideration of Section 7 be passed at this time. That Section 8 be adopted. That Section 7, Article V, of the present Constitution be adopted to replace the wording of the proposed Section 9. On roll call vote requested by Harper with sufficient seconds, Section 10, subsection 1, was adopted by the following vote: Ayes, 89; Noes, 3; excused, 2; absent, 6. That Section 10, subsection 2, be adopted. Section 10, subsection 3, Heliker's motion that the words, 'unless the business is such that requires secrecy', be stricken from Murray's substitute motion, add the words, 'to the public'. On roll call motion requested by Romney with sufficient seconds, the amendment was adopted by the following vote: Ayes, 75; Noes, 14; absent, 9; excused, 2. Murray's motion as amended by Heliker: delete subsection 3 and insert the following: 'The sessions of the legislature, committee of the whole, and all committee meetings and hearings shall be open to the public', was adopted on roll call vote requested by Heliker with sufficient seconds, by the following vote: Ayes, 81; Noes, 9; absent, 8; excused, 2. That Section 10, subsection 3, be adopted as amended. That Section 10, subsection 4, be deleted. That the following words replace the deleted subsection 4: 'Adequate public notice as defined by the rules of the legislature of committee hearings must be given.' On roll call vote requested by Delegate Martin with sufficient seconds, the motion failed by the following vote: Ayes, 19; Noes, 71. On roll call vote requested by Delegate Harper with sufficient seconds, Harper's motion: 'At least 3 days' public notice of committee hearings must be given'—failed by the following vote: Ayes, 21; Noes, 67; excused, 2; absent, 10. That Section 10, subsection 4 be not adopted. That the committee rise and report progress and beg leave to sit again. Signed, Leo Graybill, Chairman."

**PRESIDENT GRAYBILL:** You've heard the motion of the Committee of the Whole. All those in favor say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**PRESIDENT GRAYBILL:** So ordered. Mr. Swanberg.

**DELEGATE SWANBERG:** Going back briefly to Section 3, Mr. Chairman, or Mr. President, I wish to thank you first for your courtesy in allowing me to speak just a few words here. I voted against that proposal and I did so at the very last moment because it occurred to me all of a sudden that while we had adequately protected the public from the Legislature, it occurred to me that perhaps we hadn't protected the Legislature from the public. We live in an age of mass demonstrations and riots. As the situation now stands, there is nothing in this section that would allow the President of a legislative body to clear the room. There is nothing in this section that would allow a committee Chairman to clear a room in case of disorder. I realize that they could call the police. We'd have 50 or 60 people up here on some kind of a mass demonstration, the police could be called, they could be hauled off and arrested. But I submit that's a very cumbersome and sticky process in view of the fact that if something were placed in here that allowed the Chair or the committee chairmen to clear the room to preserve the public order and orderly legislative process, it would solve the problem. I leave that as a thought with the Legislative Committee.

**PRESIDENT GRAYBILL:** Very well, thank you, Mr. Swanberg. We'll now be on Order of Business Number 11, Announcements. All Constitutional Convention Delegates are invited to the Helena Symphony winter concert Saturday, the 19th, at St. John's Lutheran Church—that's tonight at 8 o'clock. Adults, $2; students, $1. You are aware that you should sign up for the party on Tuesday night, if you haven't. Are there other announcements?

Mr. Champoux.

**DELEGATE CHAMPOUX:** The Education Committee will meet at 8 o'clock Monday night in the committee room. And I have another announcement. The Helena chapter of the Boston Marching and Chowder Society will meet at the Montana Club at 7 o'clock, Monday. Now, in case you get suspicious about that group and where they're meeting, actually it's a drama group that you'll hear from Tuesday. And, also, Mr. Scanlin would like the Back Bench's Barbershop group to meet at the same time—7 o'clock, Monday, the Montana Club. Thank you.

**PRESIDENT GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. President, all delegates in the vicinity of Great Falls on Monday night are invited to the City Council chambers. Forward Great Falls there will conduct a forum, and they stress that not just Cascade County delegates—any delegates in the area who are able to come.

**PRESIDENT GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, the Bill of Rights Committee will meet Monday night at the Colonial Inn at 7:30 for the radio program, and they'll meet Tuesday morning at 8:30—oh, pardon me, 8 o'clock in the Governor's conference room for a picture taking.

**PRESIDENT GRAYBILL:** Are there other pictures we know of on Monday morning—on Tuesday morning? There's supposed to be three of those a day next week—three or four committee pictures a day between 8:00 and 9:00 in the Governor's conference room. Is the schedule out on your desks? Yes, Mr. Blaylock, would you read the others for Monday morning?

**DELEGATE BLAYLOCK:** Yes, Legislative is at 8:15; Executive is at 8:30; and General Government is 8:45. All in the Governor's reception room.

**PRESIDENT GRAYBILL:** Right. Please be prompt because if we're going to get these done in the 15 minutes and still be here at 9 o'clock, we're going to have to really work hard. I think that announcement also points out that the group picture will be taken on what? Friday? Next Friday? A week from yesterday. All right, you'll all have notice of that then. Are there other announcements? Very well, Mr. Murray.

**DELEGATE MURRAY:** Mr. President, I move, pursuant to the general powers vested in the Montana Constitutional Convention, and in accordance with the provisions of Section 7(6) of the Enabling Act [Chapter 296, Laws 1971] that the Montana Constitutional Convention shall recess temporarily until 9:30 a.m., on Tuesday, February 22nd, 1972.

**PRESIDENT GRAYBILL:** Mr. Murray, that's an error. It's until 9 o'clock on Tuesday. Do you want to change your copy?

**DELEGATE MURRAY:** I'll change the script. We'll make the motion 9 o'clock a.m., Tuesday, February 22nd.

**PRESIDENT GRAYBILL:** Very well, you've heard the motion to recess temporarily until 9 o'clock on Tuesday morning. All in favor say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**PRESIDENT GRAYBILL:** The Ayes have it and so ordered.

(Convention recessed at 5:23 p.m.)

**February 22, 1972**
**9:00 a.m.**

**Twenty-Ninth Day**

**Convention Hall**
**Helena, Montana**

**PRESIDENT GRAYBILL:** Good morning ladies and gentlemen. If you'll all stand, John Anderson will lead us in the Pledge of Allegiance.

**DELEGATES:** I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

**PRESIDENT GRAYBILL:** Reverend Burkhardt, will you lead us in the invocation?

**REVEREND BURKHARDT:** Let us Pray. Help us, O God, to know in a time of rapid change and proliferating facts and knowledge, to know that to wait quietly with reverence for life is a valid form of prayer. So, may we find the deeper current running beneath the tide which will allow us to move toward greater opportunity and dignity for all people. Amen.

**PRESIDENT GRAYBILL:** We'll take roll by voting Aye on the voting machines.

**CLERK HANSON:** Delegate Brown, Delegate Robinson, Delegate Pemberton. Mr. President, may Delegate Woodmansey be excused, please?

**PRESIDENT GRAYBILL:** Yes, Woodmansey's excused.

**CLERK HANSON:** Delegate Harper, Delegate Heliker, Delegate Pemberton, Delegate Robinson.

**PRESIDENT GRAYBILL:** Very well, let's take the recorded roll call.

**CLERK HANSON:** Delegates Blaylock, Bowman, Schiltz and Simon are present.

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|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Present |
| Aronow | Present |
| Artz | Present |
| Ask | Present |
| Babcock | Present |
| Barnard | Present |
| Bates | Present |
| Belcher | Present |
| Berg | Present |
| Berthelson | Present |
| Blaylock | Present |
| Blend | Present |
| Bowman | Present |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Present |
| Cate | Present |
| Champoux | Present |
| Choate | Present |
| Conover | Present |
| Cross | Present |
| Dahood | Present |
| Davis | Present |
| Delaney | Present |
| Driscoll | Present |
| Drum | Present |
| Eck | Present |
| Erdmann | Present |
| Eskildsen | Present |
| Etchart | Present |
| Felt | Present |
| Foster | Present |
| Furlong | Present |
| Garlington | Present |
| Graybill | Absent |
| Gysler | Present |
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Present |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| Harrington | Present |
| Heliker | Absent |
| Holland | Present |
| Jacobsen | Present |
| James | Present |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Present |
| Leuthold | Present |
| Loendorf | Present |
| Lorello | Present |
| Mahoney | Present |
| Mansfield | Present |
| Martin | Present |
| McCarvel | Present |

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|---|---|
| McDonough | Present |
| McKeon | Present |
| McNeil | Present |
| Melvin | Present |
| Monroe | Present |
| Murray | Present |
| Noble | Present |
| Nutting | Present |
| Payne | Present |
| Pemberton | Absent |
| Rebal | Present |
| Reichert | Present |
| Robinson | Absent |
| Roeder | Present |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Present |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Present |
| Swanberg | Present |
| Toole | Present |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Present |
| Ward | Present |
| Warden | Present |
| Wilson | Present |
| Woodmansey | Excused |

**CLERK HANSON:** Mr. President, 96 delegates present, 1 excused and 3 absent.

**PRESIDENT GRAYBILL:** Very well, that's a quorum and the journal will so show. We ended up the business on Saturday on Order of Business Number 10 so we'll proceed on to Order of Business Number 11 which is Announcements because there are a couple of announcements to make. First of all, the Judge for Governor Club is going to have a banquet on February 29th at 6:30 at Jorgensons. Tickets are $10 a ticket and Jerome Cate has tickets for sale in case any of you want them. Secondly, as you'll probably all remember, there is a party at the Montana Club for all delegates and people connected with the Convention tonight—$5 per person including two drinks and dinner. About 60 people have signed up. We would like everyone who wants to come to sign up because we want to call the Montana Club. So will those of you who intend to come but have not signed up, just take an opportunity here as soon as practicable and step to the rear and tell Melba McGuinn in the glass cage that you're coming, so we have a good count. I might add that I understand from Mrs. Payne that we have a lot of good skits and a lot of good entertainment, tonight so I hope that most of you will attend. Mr. Toole, did you have an announcement about the Administration Committee?

**DELEGATE TOOLE:** Mr. President, there will be a meeting of the Administration Committee tomorrow morning at 8 o'clock in the Rules Committee room.

**PRESIDENT GRAYBILL:** Very well. Are there other announcements?

Mr. Joyce.

**DELEGATE JOYCE:** Executive Committee will meet this evening on adjournment.

**PRESIDENT GRAYBILL:** Very well. Unless there is objection, we'll then move to Order of Business Number 1, Reports of Standing Committees.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** The Chair would like to point out to the delegates that the two standing committees that are to report today still intend to report but will do that later today as I understand it. Reports of Select Committees?

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Communications?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Introduction and Reference of Delegate Proposals?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Final Consideration of Proposals?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Adoption of Proposed Constitution?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Motions and Resolutions?

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Unfinished Business?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Special Orders?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** General Orders? The Chair will recognize Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move we resolve ourselves in Committee of the Whole for the purpose of handling business under General Orders.

(Committee of the Whole chairmanship assumed by Mr. Graybill.)

**CHAIRMAN GRAYBILL:** Very well. Members of the Committee of the Whole you'll please come to order. Oh yes, excuse me, all those in favor of the motion say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CLERK HANSON:** The following committee proposals are now on General Orders: Legislative, Executive, Judiciary, Natural Resources, Revenue and Finance. The Executive Committee Proposal Number 4 having been duplicated and placed on delegates' desks on the 17th day of February, 1972, 9 o'clock a.m., is now in compliance with Rule 23, Montana Constitutional Convention Rules. The Judicial Committee Proposal Number 5, having been placed on the—duplicated on the delegates' desks on the 17th day of February, 9 o'clock a.m., is hereby in compliance with Rule 23, Montana Constitutional Convention Rules. The Revenue and Finance Committee Proposal Number 7, having been duplicated and placed on the delegates' desks on the 19th day of February, 1972, a 9 o'clock a.m., is now in compliance with Rule 23, Montana Constitutional Convention Rules.

**CHAIRMAN GRAYBILL:** Very well. Ladies and gentlemen of the Convention, we adjourned on Saturday while we were considering Article XII—no Section 12—subsection 5 of the Legislative Article—Section 10, subsection 5, excuse me—Section 10, subsection 5 of the Legislative Article. Mr. Clerk, will you again read subsection 5?

**CLERK HANSON:** "Section 10, subsection 5: The Legislature may establish interim committees which may meet and exercise all legislative authority delegated to them." Mr. Chairman, subsection 5.

**CHAIRMAN GRAYBILL:** All motions had been withdrawn on subsection 5 on Saturday. Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. President. I move that when this committee does arise and report, after having had under consideration Section 10, subsection 5 of the Legislative Committee Report, I recommend that the same do pass. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee

**DELEGATE BUGBEE:** Mr. President. This essentially was Mr. Felt's proposal, and I would like him to take up from where we left off Saturday afternoon, if he would.

**CHAIRMAN GRAYBILL:** The Chair would recognize Mr. Felt.

**DELEGATE FELT:** Mr. Chairman. Perhaps it doesn't matter particularly but I hadn't expected this either and, as I recall my amendments that had been proposed—I'm looking on page 5 of the committee report, line 11—we're to strike the words, "all legislative", and another proposal to add on line 12 the words, "by the legislature", at the end of the section. And there were those who were expressing questions, not in the nature of opposition to the principle of the paragraph, but who sought some time to review the precise words as they appeared in the original article, and as they would appear with those possible amendments. And so, in this game of musical chairs that seems to be the style this morning, I would rather pass this on to those who had questions about the wording and hear from them.

**CHAIRMAN GRAYBILL:** The Chair will recognize Delegate Berg.

**DELEGATE BERG:** Mr. Chairman. I move as a substitute motion that Section 10-5, be read as follows: "There shall be a legislative council and the legislature may establish other interim committees."

**CHAIRMAN GRAYBILL:** Very well. Mr. Berg has made the following substitute amendment for subsection 5: "There shall be a legislative council and the legislature may establish other interim committees."

Mr. Berg.

**DELEGATE BERG:** As you probably all know, in 1957 the Legislature did create a Legislative Council. It was their fourth attempt. That particular council survived the Supreme Court on a three-two decision and has, since that time, functioned primarily as an investigatory body. It also has been a fact-accumulating body, and it has had the power to recommend to the Legislature various legislative proposals. It also includes a bill drafting function. These functions of the Legislative Council have been pretty well established since 1957 and, it seems to me, that they should be recognized. It may be possible that, whether we have a continuous body Legislature or whether we have some other particular system, that nevertheless, other interim committees of a more specialized nature will be created or at least the Legislature will want to create them. In view of the fact that historically they do not exercise any real legislative functions such as the enactment of law or the appropriation of money or the passage of tax revenue law, it seems to me that they should be recognized in the Constitution for the real function that they actually serve. And to do this, I suggest that the amendment that I have just proposed will best accomplish the purpose.

**CHAIRMAN GRAYBILL:** Is there further discussion of Mr. Berg's proposed amendment?

Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, perhaps just a word of what the committee thought about that. We did consider the possibility of writing the Legislative Council into the Constitution. No one, as far as I know, was opposed to the Legislative Council and was glad that it is, at present, at work. But we have been careful all through the majority of the reports that have come to you, to try not to use specific language. For example, to name particular officers, we simply say that the Legislature shall elect their officers rather than to lock in names and specific terms into the Constitution. This is what we felt about the Legislative Council. Right now, it seems to be the way the Legislature is approaching its interim work but it just might be that in the future, another set of committee—or another approach to committee operation—might be evolved by the Legislature. And we would then be faced with the problem of having the words, "legislative council", set into the Constitution. Not in opposition to the idea, but on this general term, we worded this particular paragraph as we did.

**CHAIRMAN GRAYBILL:** The Chair will recognize the presence of Mrs. Robinson, Mr. Heliker and Mrs. Pemberton and you may vote.

Mr. Aasheim.

**DELEGATE AASHEIM:** In view of the comments made by Mr. Harper, I wonder if we shouldn't strike the word, "shall", to "may", so we don't tie this thing into the Constitution. If they want to eliminate the Legislative Council, it would probably be just as well if we had "may"; otherwise, I think the amendment is fine.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** I concur and so move.

**CHAIRMAN GRAYBILL:** In other words, you're going to change your substitute amendment to read, "There may be a legislative council".

**DELEGATE BERG:** "—and the legislature may create interim committees."

**CHAIRMAN GRAYBILL:** Right. All right. We'll accept that amendment from the floor.

Mrs. Bugbee.

**DELEGATE BUGBEE:** I'd just like to remind the assembly that Mr. Unruh, when he was here said, that in his opinion he felt that interim committees were more successful than a Legislative Council. So there's this back and forthness, and I concur that it would be better not to tie either one of them into the Constitution.

**CHAIRMAN GRAYBILL:** Is there further discussion of Mr. Berg's substitute amendment? If not, members of the committee, the question then is on Mr. Berg's substitute amendment to Section 10, subsection 5, which reads as follows: "There may be a legislative council and the legislature may establish other interim committees." "There may be a legislative council and the legislature may establish other interim committees." So many as are in favor of that motion say Aye

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it. Now, Mrs. Bugbee, since that's a substitute motion, I think we had best perhaps put it again in this form. Members of the committee, you now have before you the motion of Mr. Berg that when this committee does arise and report, after having under consideration Section 10, subsection 5, it recommend the same be adopted. All in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.

**DELEGATES:** Nay.

**CHAIRMAN GRAYBILL:** Ayes have it and so ordered. Mr. Clerk, would you read—well now let me ask a point of information here. Mr. Aasheim, it's my understanding that we're going straight through the unicameral proposal here, and so we would not go to subsection 6 and 7 of the bicameral, or would you prefer that we go to subsection 6 and 7 of the bicameral?

**DELEGATE AASHEIM:** No, the plan was to continue with the unicameral.

**CHAIRMAN GRAYBILL:** Very well, then we'll go straight on down page 5 and read Section 11 please, Mr. Clerk.

**CLERK HANSON:** "Section 11, Bills, subsection 1: A law shall be passed by bill. Any bills shall not be so altered or amended on its passage to the legislature as to change its original purpose." Mr. Chairman, subsection 1, Section 11.

**CHAIRMAN GRAYBILL:** Members of the Committee of the Whole, you now have before you Section 11 of the Legislative proposal. The Chair will recognize Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 11, subsection 1, that it recommend the same be adopted. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Nutting, you're correct. We'll take Section 11, subsection by subsection, so on Section 1, go ahead.

**DELEGATE NUTTING:** Mr. Chairman. When the committee—the Legislative Committee—considered these, which could be considered procedural matters, there are 19 sections in the present Constitution which refer to procedural matters. We attempted to cut them out, as many of them as possible, and just leave those in that we felt were important; that the people would have a true picture of the Legislature. We arrived at retaining 5 sections of the 19 and added 1 new one. Section 1 provides that no law shall be passed except by bill and that a bill should not be so altered or amended as to change its original purpose. We felt that this was important in that it established the method of passing a law, that it had to be by bill and that the bill should not be changed because, definitely a bill is a proposal by a citizen, and therefore he had the right to have a voice in that his particular opinion should be considered—it should be voted on. It should not be changed so that when he finishes up, he does not have a true picture of exactly what his proposal was. And we felt that this was an important enough procedural question to be a constitutional matter. Thank you.

**CHAIRMAN GRAYBILL:** Is there discussion? Very well, members of the committee, you have before you for your consideration, subsection 1 of Section 11. So many as shall be in favor of subsection 1, Section 11, as proposed by the majority, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay. (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it and the motion has passed. Mr. Clerk, will you read Section 11, subsection 2?

**CLERK HANSON:** "Section 11, subsection 2: On any vote which advances or changes the status or substance of a bill, resolution or rule, the vote of each member must be recorded." Mr. Chairman, subsection 2.

**CHAIRMAN GRAYBILL:** Subsection 2 is before you.
Mr. Nutting.

**DELEGATE NUTTING:** I move that when this committee does arise and report after having had under consideration Section 11, subsection 2, that it recommend the same be adopted. Mr. Chairman, this is the new section—that subsection that we added, and it's to insure that the people actually have an opportunity to see how their representatives voted. It reads that any vote which advances or changes the status or substance of a bill, resolution or rule, the vote of each member must be recorded. In this way, it's possible for every change, regardless of how it amends or changes a bill, resolution or rule, the record will be obvious to anyone of the electorate that wants to go and look. So we felt that this was a necessary thing to give visibility to the Legislature.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman. I move to amend Section 11, subparagraph 2, on the explanatory notes page 22, line 17, at the end of the proposal, by striking the period at the end of line 17 and adding the following words, "and entered on the journal." The reason I'm offering this amendment is that apparently from the comments, it's the intent of the proponents of this section that there be a recorded vote made and, I submit to you, that when you use the voting machine, there is a recorded vote taken; but if you're off the record and out of the journal, or out of the journal, it does not go into the journal, and the journal is a permanent record of the legislative body. And I'm merely offering this amendment to assist the committee in carrying out the apparent intent of this article.

**CHAIRMAN GRAYBILL:** Very well. Mr. Aronow's amendment is accepted by the Chair and it simply adds the word, "and entered on the journal", to subsection 2 for the purposes he has stated. Is there discussion of the amendment? Mr. Aronow's amendment. If not, all in favor of amending subsection 2 by adding the words, "and entered on the journal", please indicate so by saying Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay
(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it and so ordered. Now, on the principle subsection, is there further discussion?
Mr. Etchart.

**DELEGATE ETCHART:** Would Mr. Nutting yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Nutting?

**DELEGATE NUTTING:** Yes.

**DELEGATE ETCHART:** Would—as I read this, if a bill changed the status in a committee, would this have to be entered in the journal then?

**DELEGATE NUTTING:** According to this amendment, yes it would.

**DELEGATE ETCHART:** Mr. Chairman. Every action of a bill then in a committee going to a subcommittee would have to be entered in the journal?

**DELEGATE NUTTING:** I really can't answer that. If you went from committee to subcommittee, I would not think that that would change the status. If it was amended in subcommittee, that amendment acceptance would have to be entered in the journal, yes.

**CHAIRMAN GRAYBILL:** Is there other discussion?
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Would Mr. Nutting yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Nutting?

**DELEGATE NUTTING:** Yes.

**DELEGATE ESKILDSEN:** As I read this and we're changing the substance of a bill—like on the Committee of the Whole here—sometimes just one little word which isn't too important but, as I see it, every one of those would be a roll call vote. And if we was doing that in this body, you'd have a pile of recordings this high. I'm wondering if we're going to force this same thing onto the Legislature, that every time they take a vote, by this, pretty near every vote will be recorded.

**DELEGATE NUTTING:** I would say you're correct, that they would have to be recorded if you—every amendment and every—according to this provision, every amendment and anything that would change the substance would definitely have to be a recorded vote and entered in the journal under this provision.

**DELEGATE ESKILDSEN:** Mr. Chairman?

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I know what we're trying to get at. We want to be sure that the public knows exactly what's going on in the Legislature, especially in the Committee of the Whole. I would ask each of you to think pretty carefully what we're doing here. I can think of when we started this Convention, that wasn't quite a majority that wanted a roll call vote on everything, but can you imagine what we'd been going through by now had we taken a roll call vote on pretty near everything we did; on all the amendments that was offered; as we went through the days here—the last few days—we saw vote after vote answered by Ayes and Noes. What in the world—what are we going to do to that Legislature if we put this in the Constitution and force them to do this on every vote? I can see nothing but chaos from this, and I become quite concerned about this body causing the next body to do something that we're not doing ourselves. I don't think this is something we should just pass over real lightly; I think we should give it some deep thought and consideration. And we talk about cost; I don't know what it costs to run one of those off, but if we took a roll call vote on everything we did, we'd double our cost every day, I can bet you, running it through that machine. And we're not even giving the Legislature a chance to change this without bringing it back to the people. I would surely want each of you to think about what we're doing here if you vote for this.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President. We have violated the very rule that we're trying to put on the Legislature in the last votes this morning. Every one of them had been substantive; every one of them have been changes to the Constitution and every one we've done—and violated every one of them this morning that we're asking the Legislature can't violate. And I think we should realize the amount of roll calls that you're going to have on these divisions and, right now, unless somebody asks for roll call, it won't be got on this question. I think that you better stop to think how many roll calls we'd have taken this morning and put in the journal and I just received this here. I wonder how thick that will be. And you're asking a Legislature to do this from now on? I think you better do a lot of thinking around here.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman. May I move an amendment?

**CHAIRMAN GRAYBILL:** Have you got it in writing for us?

**DELEGATE HARPER:** No, but it will just substitute a phrase for the first word when I get it to you. It says "upon the request of any member" and then go on, "any vote". (Inaudible)—write it and bring it.

**CHAIRMAN GRAYBILL:** Do you want to prepare it for us please? Very well, the amendment of Mr. Harper is to Section 11, subsection 2, amend by the deletion of the first word, "On", and substituting therefor the words, "upon the request of any member". So that the section reads, "Upon the request of any member, any vote which advances or changes the status or substance of a bill, resolution or rule, the vote of each member must be recorded and entered on the journal."

Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, I think the little amendment is self-explanatory and I won't comment on it.

**CHAIRMAN GRAYBILL:** Very well. Is there discussion?

Mr. Choate.

**DELEGATE CHOATE:** Would Mr. Harper yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Yes.

**DELEGATE CHOATE:** I just wonder what purpose this would serve since, under present rules, a request for roll call by any member if he gets five seconds, will automatically be afforded to him.

**DELEGATE HARPER:** This particular Section 11, Number 2, extends this matter to any committee, including the Committee on the Whole, all readings of bills in the Legislature, and this is not presently true as I understand it. This would allow—my amendment would allow—a committee to pass by procedural matters and even where there is complete agreement on the changing of words, and so forth, as we have done here at times on the floor, it would not make it necessary for the vote to be recorded in the journal. But, if any person—for example, in a minority—wanted to make sure that this change which he thinks to be substantive or enough to warrant it, then one member could ask that this be done.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I move a substitute motion that the section be deleted and the reason I do, the joint rules of the House of Representatives for the State of Montana at the present time, provide a roll call shall be taken on the request of two members. So it seems to me we already have it in the joint rules which are probably—and I don't think it's necessary to write this into the Constitution. The rules can always take care of it.

**CHAIRMAN GRAYBILL:** Mr. Romney, the Chair is in doubt. Are you moving that we delete subsection 2, the whole section, or only delete Mr. Harper's amendment?

**DELEGATE ROMNEY:** I'm moving to delete the entire section, subsection 2.

**CHAIRMAN GRAYBILL:** Very well, your substitute motion to delete subsection 2 will be accepted by the Chair. The debate is now on Mr. Romney's motion to delete subsection 2.

Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman. Will Mr. Romney yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Certainly.

**DELEGATE REICHERT:** In your experience as a legislator—and I'd like to ask this question of the other legislators present—have they ever had recorded votes on second reading? That was our primary interest in including this section in our Legislative Article; the fact that the citizen does not know how the legislator votes in second reading.

**DELEGATE ROMNEY:** This is full of them.

**CHAIRMAN GRAYBILL:** Is there further discussion?

Mr. Felt.

**DELEGATE FELT:** Mr. Chairman, I think a somewhat more complete answer to the question is that in the legislative bodies, we cannot have roll call during Committee of the Whole, but we have available a motion to segregate as the committee comes out of Committee of the Whole, and that a roll call vote can be obtained at that time on any question, if a member requests it, so that the principle purpose of functioning in Committee of the Whole is to permit members to speak and do as they think is right, without being forced to a roll call vote, and there's a lot of importance in that, as well as the importance of being able to give the public knowledge so that legislators must account for the way they've acted in a legislative body. And of course, I think as Mr. Romney and others have indicated, that it is a very improper thing for the Constitution to include anything as restrictive as the proposal that came in the majority report here. I think that I would immediately start looking for at least twice as many lawyers in our firm as we have now, because there'd be every opportunity to find a statute unconstitutional. I know you can't avoid making some work for lawyers, but I really hate to see you cause us to double our workload just by one little thing like this. And it's, in my opinion, vital that we do have something in the Constitution such as is in our present Constitution. And I would wish that someone might move that we continue the present Constitutional rule, which does require a roll call vote before final passage of a bill, and that the names be mentioned as well, which I imagine, is implied or might even be inherent, in the proposal that's before us as it came from committee, although names of members is not mentioned. And it could simply be that the total Ayes and total Noes would be considered as sufficient compliance with the language of the committee proposal. But I would very much dislike seeing that restrictive a proposal made. How in the world you can require these roll call votes and expect that there will be complete compliance with it is beyond me. We're giving away the power to suspend rules in cases of emergency if this is done and, while I would very much like to see the public know how every legislator acts, and I am very much in favor of using roll call votes — many, many times that were it may not have been used as frequently as it should have been in the past and I certainly want it done in final passage and approval. But I certainly don't like the committee proposal and I'm not quite satisfied yet with the proposal before us, because I think it leaves it too much to the discretion of the Legislature. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harlow.

**DELEGATE HARLOW:** (Inaudible) I'm a little disturbed over the remarks being made here that a person should not be required to be responsible for the way he votes in the Legislature. I think we had this same argument [illegible] 4 weeks ago when we were adopting our own rules here in the Convention. It started out with requiring all votes to be recorded and we saw that that was not really too good, and we adopted this rule in which a recorded roll call vote, on any matter on the agenda of a committee and on which a vote is to be taken, shall be taken on demand of any member of the committee. I think as this subsection is amended in which if it is matters it is of not great importance, it need not be recorded. But I, too, have served in this Legislature over a various span of years and I have been thwarted continually by in committee, committee members knowing that they were not on view to the public and that their actions were not written down on a recorded vote, would vote one way—perhaps to kill the bill—and when they were approached by someone outside "Well, what happened to this particular bill in committee?" They would very graciously say, "I don't know; there was just too many of them voted against it and it lost in committee". And you ask them, "Well, how did it vote, who voted for or against?" "That's a secret; we're not supposed to divulge how the committee voted." But I think that's a dastardly way to run a Legislature and to develop laws here in the State of Montana. And this thought that the many recorded votes would break the State of Montana, would delay the action of good legislation, is a little bit absurd. We had that same thought brought up when we made the rules for this Convention right here. We solved that by putting in this little statement that a member could call for a vote if he thought it was important, if not, on these smaller things, it could go through without being recorded. So let's look at this motion very carefully to delete this whole section. The Legislature, sure, sets up the rules but the rules that was used in the last session of the Legislature are not the rules of the next session of the Legislature. Each session of the Legislature makes and adopts its own rules. So let's not get carried away by a little expense or the fact that a person doesn't have to be responsible for his actions when he is a legislator; and let's get this section in the Constitution where we will protect the rights of the people to know. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** I am proud to hear our ex-legislator Paul Harlow speak. I wish maybe a few more of our ex-legislators had the good opportunity to sit between two preachers. It might do something similar for them. (Laughter) I speak on this issue as a citizen who has watched the Legislature in action, and I think that one of the most frustrating parts of this procedure is watching second reading, where there is no way, really, of knowing who killed the bill. True, if it gets by second reading, you get a recorded vote on third reading, and you have practically nothing killed in third reading. I don't think that the argument that it takes too much time to go through recorded roll call votes really holds, especially with Mr. Harper's amendment because you find almost every time when something—maybe not frequently enough but at least quite frequently, when something comes out of second reading—as Mr. Romney explained, it is segregated and segregation takes a good deal of time. In fact, sometimes it means debating the whole thing over again. So, I can't see that time is a matter and I can't see that Mr. Felt's argument, that this is going to cause lawsuits, is going to be a factor to contend with because we will have it on a record when a roll call is called for, and since roll calls aren't necessary unless they are called for, I can't see how this is any more of a problem than what we have now. I think that if we are going to go to the voters as an open—or supporting an open system—that recorded votes are surely a very necessary part of the system. And they should be imposed right from the beginning of action and not just on the very last bit of the action. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Hanson

**DELEGATE ROD HANSON:** Mr. Chairman, I would like to make a substitute motion to all motions pending.

**CHAIRMAN GRAYBILL:** Just a minute, Mr. Hanson. Mr. Murray, were we going to have only one substitute motion or were we going to have two substitute motions?

**DELEGATE MURRAY:** (Inaudible reply)

**CHAIRMAN GRAYBILL:** All right. You can't do that Mr. Hanson yet, but I'll give you a chance before we finish. We already have a substitute motion pending. We're having two amendments and one substitute but we'll come back to you. All right, the issue is still on Mr.

Romney's motion to delete subsection 2. So many as shall be in favor of Mr. Romney's motion to delete—Mrs. Reichert, I beg your pardon.

**DELEGATE REICHERT:** Mr. Chairman. I would like to speak in opposition to Mr. Romney's amendment. I have the House Journal here and since he mentioned the fact that many second—(Inaudible)...on second reading many bills do come up for a recorded vote. I checked. And in checking 100 bills under second reading, I found one that came up for a recorded vote. Thank you.

**CHAIRMAN GRAYBILL:** All right.
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. I rise, too, in opposition to Mr. Romney's motion. I do so because I think that we should have a way to record our votes. I don't feel, however, if there was 100 preachers sitting around me it would change my mind any. No disrespect to the preachers but I don't think that the will of God has anything to do with this vote. I would just prefer this post and my little mare here to anything else that there is in this assembly, I'll tell you. (Laughter)

**CHAIRMAN GRAYBILL:** Are you on the subject, Mr. Eskildsen? (Laughter)

**DELEGATE ESKILDSEN:** Yes, I'm going to get on the subject in a minute. (Laughter) but as I stated before, it was insinuated that I might do better had I had a couple preachers around me. I got one in back of me and one in front of me. That ought to be sufficient, but I'm not in favor of Mr. Romney's motion to delete that section. I think we need it. Well what I am concerned with, is having it written in such a way that we accomplish what we set out to do. In other words, when we're taking a vote on something of importance, we can have a roll call vote. When it's not important, let's don't force the Legislature to do something that we're not doing ourselves. And we know why we're not doing it; we're not doing it because it would be too time consuming for one thing; it would be disturbing for another thing; so, let's get the vote on important things—give the opportunity for the important vote—and forget all the minor votes and not record them; they're not necessary. That's my feeling.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Romney's substitute motion to delete subsection 2 in its entirety. So many as shall be in favor of that motion say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and the motion fails. All right, we're now debating Mr. Harper's amendment which says that "on request of any member, any vote which advances or changes the status or substance of a bill, resolution or rule, the vote of each member must be recorded and entered in the journal".
Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. Chairman. I'd like to make a substitute motion.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE ROD HANSON:** I would like to make a substitute motion to delete the section as it is now written and insert therein in place of what is there now this language: "All votes taken on final action of a bill, either in committee or in Committee of the Whole and on final passage, must be recorded and entered on the journal." Mr. President.

**CHAIRMAN GRAYBILL:** Have you got that in writing?

**DELEGATE ROD HANSON:** I do have.

**CHAIRMAN GRAYBILL:** Would you go get that from Mr. Hanson, please? Can you give it to us now, Bob—or Rod? Mr. Eskildsen, for what purpose do you rise? Mr. Hanson has the floor.

**DELEGATE ESKILDSEN:** Excuse me.

**DELEGATE ROD HANSON:** Yes, Mr. President. I finished writing it a little better so you'd have it there. I think that this does the thing that we're trying to do here and gets away from having recorded votes on every little amendment or change that's made in a bill. It would give you a recorded vote on the final vote that is taken in the committee when it's reported out to either the House or the Senate, whatever it might happen to be. It gives you a vote when it is acted upon finally in the Committee of the Whole, and wouldn't be necessary to have votes on any amendments, but on the final vote in Committee of the Whole. And then, I don't know whether the language is correct on this, and on final passage, so that when it was passed by the assembly and sent to the other assembly or finally passed and sent to the Governor; and this may need some cleaning up by the Style and Drafting Committee to get the right language there but I think the intent, at least, is there.

**CHAIRMAN GRAYBILL:** Very well Mr Hanson's motion, which would delete the present language of subsection 2 and would add this: "All votes taken on final action of a bill either in committee, in Committee of the Whole, or on final passage, must be recorded and entered on the journal." Is there discussion?
Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. President. I rise in opposition to that substitute motion. Surely from the fact that much important material—as a matter of fact, the most important sometimes to certain people, that is—is struck out in votes, not necessarily the final one. So therefore, I think that this would not be acceptable. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. President. Could you read that over more slowly please so we could get it down?

**CHAIRMAN GRAYBILL:** All right. "All votes taken on final action of a bill either in committee, in Committee of the Whole, or on final passage must be recorded and entered on the journal."
Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman. I rise in opposition to this. I think that this would be practically the same as deleting the provision. For one thing, quite frequently, a bill is killed for all practical purposes, by sending it back to committee; quite frequently, an amendment to the bill, in essence, destroys the intent of the bill. And neither of these, under this provision, would be recorded votes.

**CHAIRMAN GRAYBILL:** All right. The issue is on whether or not to adopt Mr. Rod Hanson's substitute amendment—substitute motion—on Section 10, subsection 2. The sense of the motion is to delete the present language and to add there in place thereof, "All votes taken on final action of a bill either in committee, in Committee of the Whole, or in final passage, must be recorded and entered on the journal." All in favor please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No

**CHAIRMAN GRAYBILL:** The Noes have it.

**UNIDENTIFIED DELEGATES:** Division.

**CHAIRMAN GRAYBILL:** All right. We'll use the voting machines. All in favor say Aye. All opposed, No. Have all the delegates voted? Any delegate wish to change his vote? 65 delegates having voted No and 24 having voted Aye, the motion fails. We're now debating Mr. Harper's substitute language. The substance of Mr. Harper's substitute language was to put the following phrase, "Upon the request of any member," in front of subsection 2 so that it reads: "Upon the request of any member, any vote which advances," and so forth, "must be recorded." Any further discussion?
Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. President. I would like to propose a substitute motion. Actually, it's simply to delete two words from Mr. Harper's amendment, if he would accept it, and I am for the idea of having the vote public; I see no reason why any legislator wouldn't be acceptable to the fact that the public know how he votes in the public's business. However, I do accept the fact also that this complete recording of all kinds of votes can be expensive, time consuming, and so forth, so, I would like, if Mr. Harper would accept it, to strike "resolution or rule" from the amendment. Could I direct that question at Mr. Harper or shall I put it in the form of a substitute motion? I'm trying to save time.

**CHAIRMAN GRAYBILL:** Whichever you want to do.

**DELEGATE CHAMPOUX:** I'd like to direct it to Mr. Harper, if you may. Would you accept that?

**DELEGATE HARPER:** Mr. Chairman. Since that is a section that comes out of committee, I would rather not take it upon myself to change the committee action on that. Perhaps Chairman Aasheim would speak to it.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman and members of the assembly. I would leave "resolution or rule" in there as long as—because a resolution can be quite significant also. I would leave it in there. I see no reason why you shouldn't.

**CHAIRMAN GRAYBILL:** Now Mr. Champoux, do you wish to make that a substitute motion?

**DELEGATE CHAMPOUX:** Yes, I would like to make it a substitute motion that we strike, "resolution or rule."

**CHAIRMAN GRAYBILL:** All right. I've done that on the paper Mr. Harper sent up so you don't need to send it up separately. The issue then is on Mr. Champoux's substitute motion to delete "resolution or rule" from the language which would have to be recorded on the request of any member. Any further discussion? If not, all in favor of Mr. Champoux's proposed substitute motion say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** All opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and it fails. We're back on Mr. Harper's motion which is, "Upon the request of any member, any vote which advances or changes the status or substance of a bill, resolution or rule, the vote of each member must be recorded and entered on the journal."

Mrs. Eck.

**DELEGATE ECK:** I'd like a roll call vote.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman. I would oppose the amendment by Mr. Harper because it would not require that any vote be recorded, and I don't think that was the intent of his motion.

**CHAIRMAN GRAYBILL:** Is there other discussion? We will have a roll call. I trust there are five people that will second Mrs. Eck. (Seconds rise) All right, that's fine. The motion then is on Mr. Harper's.

Mr. Eskildsen. Excuse me.

**DELEGATE ESKILDSEN:** I just wanted you to state that again—what we was going to be voting on for sure.

**CHAIRMAN GRAYBILL:** Right. Mr. Harper's amendment to the language in subsection 2 of Section 11. Now, it would read as follows: "Upon the request of any member, any vote which advances or changes the status or substance of a bill, resolution or rule, the vote of each member must be recorded and entered on the journal." We'll open the voting machines.

Mr. Aasheim.

**DELEGATE AASHEIM:** I must arise to oppose this amendment because it's—any member—that's too liberal. You're going to have to—because anyone who wants to disrupt the proceedings can just get up and say we want a recorded vote. And I would say we should amend that to five to make it more safe—any five members call for a recorded vote—because surely, we need five members if we're going to make any substance to it at all. Otherwise, we might as well delete the amendment. I move that in place of "any", we put "five members".

**CHAIRMAN GRAYBILL:** You'll move a substitute motion which is identical, except it changes the word...

**DELEGATE AASHEIM:** "Any" to "five".

**CHAIRMAN GRAYBILL:** "Any" to "five". It would add the word "five". The substitute motion of Mr. Aasheim is that "Upon the request of any five members, any vote which advances and changes," and so forth.

Mr. Leuthold.

**DELEGATE LEUTHOLD:** Mr. President. I think we're losing sight of another thing on Mr. Aasheim's motion there, that five members could still block a final vote and I think we do—we probably all agree that all final votes should be recorded. But in that case, I think maybe we should add to the section Rod Hanson's recommendation here, that we do have a roll call vote on all final action. Perhaps the two of them together would make an acceptable section. I'm just offering it as a suggestion here.

**CHAIRMAN GRAYBILL:** Very well. If this motion prevails and we do have the language, we can then decide whether to do that.

Mr. Heliker.

**DELEGATE HELIKER:** Mr. Aasheim, will you yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I will.

**DELEGATE HELIKER:** Mr. Aasheim, what would this amendment do to the recorded vote in committees?

**DELEGATE AASHEIM:** Well I don't believe, Mr. Heliker, we have any language here that applies to committees, and I think we probably should have had it.

**DELEGATE HELIKER:** My understanding was that this did apply to all committees.

**DELEGATE AASHEIM:** Well, I didn't hear the comment, Mr. Chairman.

**CHAIRMAN GRAYBILL:** He said that he understood it, Mr. Aasheim, to apply to committees and I don't think the language is restricted so that it says, that any vote which advances or changes the status or substance of a bill—so I presume it would apply to committees. Isn't that—I think that was stated as the committee intent when they put that language in there.

**DELEGATE HELIKER:** Yes, I think that was clearly stated.

**DELEGATE AASHEIM:** Well, Mr. Chairman, in that case I want to speak on the whole motion then because I don't believe that this applies to a vote in the committee, and I think it should apply to votes in the committee because that's where all the subterfuge takes place is in the committee. And I don't believe this language implies committee. It just says the "status of a bill", and I think we're talking about status of a bill—and I'm not an attorney—but I think the court would rule that we're talking about the status of a bill in the assembly here, not in the committee.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Would Mr. Aasheim yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I will.

**DELEGATE CHAMPOUX:** Mr. Aasheim, how many people are there in the typical Legislative Committee, sir?

**DELEGATE AASHEIM:** Oh, I'd say 10 to 15.

**DELEGATE CHAMPOUX:** And do you think we can get 50 percent of them to accept this?

**DELEGATE AASHEIM:** I didn't understand the question.

**DELEGATE CHAMPOUX:** Is that the intent then? You say 50 percent of the committee then would have to accept it to get a roll call, is that right?

**DELEGATE AASHEIM:** Well my, Mr. Chairman, I don't believe that this applies to committee at all, and I think it should, but I don't believe this would apply to the committee and I don't think—I'm talking about five on this floor here when I'm talking about five. So, maybe I'm misleading you.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Well, it was my understanding by his last statement, that he thought that this did apply and, if it does, he's talking about 50 percent of the committee, and I submit that would be rather tough to get.

**CHAIRMAN GRAYBILL:** Very well. Is there further discussion?
All right, Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman. I just want to say that we discussed this particular section, I believe, when our Chairman, Magnus Aasheim, was away on other business and it was our intent to include committee votes too.

**CHAIRMAN GRAYBILL:** Very well. Mr Arness.

**DELEGATE ARNESS:** Mr. Chairman. I hate to disagree with my colleague from District 23, Mr. Harlow, but speaking as one who has been thwarted in this body a number of times, I would hate to see the Convention continue in the rulemaking business the way we're going here. I'm sure that the frustration which I have felt, and which a number of us have experienced, would not in any way be affected by a rule like this, except possibly that it would be compounded. It's obvious from the trouble that we're having rewording or rewriting this rule that it is just a rule. It was my understanding that we were supposed to be dealing with fundamental constitutional principles here and not writing the rules for the Legislature. What we're doing is just writing the rule for the Legislature. I think we should get over this thing, get rid of it and get on.

**CHAIRMAN GRAYBILL:** Mrs. Babcock.

**DELEGATE BABCOCK:** Well, I'd just like to point out that in our Executive Committee, there's times that you can change your vote. I voted on some things in the Executive Committee that later came out in the majority proposal that I was for, and yet we had to change it in order to be on the minority report. So I think we ought to leave the rulemaking to the Legislature.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I speak to this issue as I spoke to the issue on Saturday concerning the secrecy matter. I think there is nothing more important that this Convention can do than open up the Legislature so that the people can know what's going on and can consult the records to see what went on. And, Mr. Arness, I think we may have to work a little bit to get this thing written so that it is workable, but it seems to me that it is one of our prime functions of being here, to see to it that this legislative process is made accountable and responsive to the people.

**CHAIRMAN GRAYBILL:** Mr. Harlow.

**DELEGATE HARLOW:** Mr. Chairman, I am just wondering—I want to make a suggestion now—that in order to overcome the weakness that seems to be apparent in the subsection 2, that we accept subsection 2 as it is and then insert another subsection, which will be identical with the Section 24 in the present Constitution, that states that on the final passage, the vote be taken by Ayes and Nays and the names of those voting be entered on the journal. That would take care of the third reading and this section, as it has been amended, would take care of the votes in the various committees. This thought that we here in the Constitution should not be writing the rules for the Legislature is a rather undependable sort of a thought. We cannot allow the Legislature to write its fundamental rules because, if we do, then it would have the power to write any kind of a rule that it wanted to, make itself a closed body, and perform its functions in complete secrecy from the public. That has been some of the troubles with the Congress at the present time. They have the power to write their own rules, and they write them so that the people don't know how the Congressmen are voting. So I do not think we should harbor the thought that this is not the place to write the rules for the Legislature. The Legislature can write the rules for the operation for the rest of the state, but they should not be allowed to write the rules for themselves. I put this suggestion to you. I do not make it in the form of a motion. I want you to think about it and see if we can't solve this dilemma that we're in, in regards to requiring votes on final passage to be recorded.

**CHAIRMAN GRAYBILL:** Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman. In view of the fact that there seems to be considerable question about what the wording of this should be, I move that we pass consideration of this until after lunch or sometime so the people can get together and figure out what they'd like to have in it and not take up the time on the Convention floor. I think we would do a lot better in this manner.

**CHAIRMAN GRAYBILL:** I don't think your motion is in order as you've stated it. There's no such thing as a motion to pass.

**DELEGATE GYSLER:** Okay, a motion to table?

**CHAIRMAN GRAYBILL:** No. I suppose, if I could help you, the thing you'd have to do is move that this matter be postponed to a day certain, that to be today at 1 or 2 o'clock, or something of that nature. You'd have to postpone it to a time certain.

**DELEGATE GYSLER:** I so move then to this afternoon when we convene—1 o'clock, if that's the time.

**CHAIRMAN GRAYBILL:** All right. The motion of Mr. Gysler is to postpone this matter to 1 o'clock today. All in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. All in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** All in favor vote Aye and all opposed vote Nay. 60 delegates having voted Aye and 20 delegates having voted No, the motion passes. All right, 68 to 20. Will the clerk please read subsection 3 of Section 11.

**CLERK HANSON:** "Subsection 3, Section 11: A bill shall become a law upon a majority vote of the members present." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman. Since we passed consideration of subsection 2, it seems to me that subsection 3 ties into it very closely. So for that reason, I would move that we pass consideration of subsection 3 until 1 o'clock this afternoon.

**CHAIRMAN GRAYBILL:** The motion has been made that we pass consideration of subsection 3 until 1 o'clock. All in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it and so ordered. Will the clerk please read subsection 4?

**CLERK HANSON:** "Subsection 4: Each bill, except general appropriation bills and bills for the codification and general revision of laws, shall contain only one subject. A law may be challenged on the grounds of noncompliance with this section within 1 year after its effective date but not after that period." Mr. Chairman, subsection 4.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you subsection 4. Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 11, subsection 4, that it recommend the same be adopted. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** This subsection is essentially the same material as contained in Section 23 of our present Constitution. It provides that each bill, except general appropriation bills, bills for the codification and general revision of laws, shall contain only one subject. The purpose of the one subject matter is, of course, to make sure that you are—that everyone is aware of what an appropriation bill is for and not have riders attached and things like that that would completely change the aspect of the entire bill. If an appropriation bill starts through as one subject, then it remains as one subject, and there's no way that additional material can be slipped in and into a large appropriation bill and change it. Now, we did investigate the—in Section 23, it also contains a title—a matter that the title must contain all the changes. That is now a Legislative rule and we feel that it would want to remain as a Legislative rule. In looking over court cases, we found that in most instances where bills were contested in court, it was because of the title provision. Therefore, we felt that this would be taken care of by Legislative rule and it would not be necessary to place it in the Constitution. So, we did remove that portion of it. In addition, we added the last sentence which says that a law may be challenged on the grounds of noncompliance with this section within 1 year after its effective date but not after that period. In other words, we figured that a law should not be contested after it has been on the books; it should not be contested on the fact that it contained more than one subject. If everyone had a year to look it over, that should be ample time and after that time, it should not be contested on that particular provision. I think this is a good measure and should be adopted. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 11, subsection—

**CHAIRMAN GRAYBILL:** Just a moment. Okay. Go ahead.

**CLERK HANSON:** —4, page 23, line 11 of the Legislative Committee Proposal by changing the 'period' after the word, 'subject'—changing the 'period' to a 'comma' and insert after the comma, the words, 'which shall be clearly expresssed in its title semicolon, but if any subject shall be embraced in any act which shall not be expressed in the title comma, such act shall be void only as to so much thereof as shall not be so expressed.' Signed, Aronow."

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman. This is the language out of the existing article of the present Constitution and I may quote from the Supreme Court of Montana which will give my reasons much better perhaps than in my own words. And I quote now from some decision; "the purpose of requiring singleness of subject is to prevent the practice, which is common in all legislative bodies where no such restriction existed, of embracing in the same bill, incongruous matters having no relation to each other or to the subject specified in the title by which measures were often adopted without attracting attention." Then, the Supreme Court also said, "The purposes of this section are to restrict the legislature to the enactment of laws, the objects of which legislators and the public as well may be advised of to the end that any who are interested, whether as representatives or those represented, may be intelligently watchful of the course of the pending bill. The limitation is likewise desiring to prevent legislators and the people from being mislead by false or deceptive titles, and a guard against fraud in legislation by way of incorporation into a law provisions concerning which neither legislators nor the public have any intimation through the title read or published." And Mr. Chairman, I submit to this body that most of us have watched legislation going through the Legislature depend upon the newspapers. Now, I don't know what the practice is in the *Billings Gazette* or the *Miles City Star* or the Missoula paper, but I know in the *Great Falls Tribune*, which I rely upon for my information and a good many of us along the Hi-Line and in Great Falls also, that the only way that you know what is pending in the Legislature is that the newspaper runs in very fine print the titles to the bills. And if there's no provision in this Constitution that every subject matter that's contained in a bill is expressed in that title and the title is the only thing we have to alert us, there can be terrific fraud and deception as I read to you from the decisions of our Montana Supreme Court. And as laudable as the purpose of the people who are sponsoring the deletion of the title from the Constitution may be, it is not always good bills that get killed either. It's much like the provision that we have that everyone is presumed to be innocent until proven guilty beyond a reasonable doubt. True enough, there's a few guilty people get turned loose but it's far better to turn loose 10 or 100 guilty people than to convict and sentence to the penitentiary one innocent person. And likewise, with this provision, the only thing that we, the public, have to alert us as to what is going on in the Legislature, is the title of the bills that are introduced, and we must keep the purity of the titles. The system has worked. Sure, once in a while, there is a goof and a bill is held unconstitutional because the title is defective, but this provision provides that only those things that are not expressed in the title are held invalid, and those that are in the title are perfectly valid. The Legislature has a staff of young lawyers to help them; they have the Legislative Council; they have some experts on drafting bills and I submit that this is not a onerous requirement but it is a provision that keeps the moral tone, keeps honesty in legislation. It keeps someone from slipping in a provision which is hidden, and that I know from my experience in the Legislature, the first thing you do is read the title to a bill to see whether there's anything of interest, anything dangerous in it, and then you may glance through the body. But, if it's something that seems all right from the title, you probably don't devote the time to the body of the bill that you might on some other bill which is of greater interest. And I offer this amendment.

**CHAIRMAN GRAYBILL:** Mr. Davis

**DELEGATE DAVIS:** Mr. President, a point of clarification—does this amendment now include the last line in the majority proposal?

**CHAIRMAN GRAYBILL:** Yes, it does.

**DELEGATE DAVIS:** Thank you.

**CHAIRMAN GRAYBILL:** I'll read the amendment again. The amendment would add after the first sentence of subsection 4, the following clause as part of the sentence, "which shall be clearly expessed in its title." In other words, "contain at least one subject which shall be clearly expressed in its title. But if any subject to be embraced shall be embraced in any act which is not expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

**DELEGATE DAVIS:** Mr. President, would Mr. Aronow yield to a question?

**DELEGATE ARONOW:** (Inaudible)... yield.

**DELEGATE DAVIS:** Then, as I understand the President's reading of this amendment, the sentence, "A law may be challenged on the grounds of noncompliance with this section within 1 year from its effective date but not after that period". you intended to delete that?

**DELEGATE ARONOW:** Not in this amendment. I have another amendment, if this one passes, which I'll offer to delete that last sentence.

**DELEGATE DAVIS:** Thank you

**CHAIRMAN GRAYBILL:** Mr. Roeder.

**DELEGATE ROEDER:** Mr. Chairman. After hearing Delegate Aronow's magniloquent address on this provision, I rise with some trepidation, but on this particular issue, I feel constrained to speak. We've heard Saturday and today some predictions about what's going to happen to the law office business if such and such happens. Well, here there is no if; there's history. This particular section, and what we're trying to do here now, is recreate Section 23, Article V, as it currently exists in the Constitution. The original purpose, I admit, is very noble—to prevent riders, to prevent omnibus bills, and so forth,—but in actual practice, this section has become very pernicious. What you're dealing with is a monster, a hydra. This particular section of the Constitution is the most adjudicated section of the Constitution but to what purpose? Are the purposes generally noble? I suspect they are not. Now, whether a title clearly expresses a subject or whether one or more subjects is contained in a bill, is a question over which reasonable men will differ. I think to argue these things, to have legislation destroyed on the grounds that the title is not clear, or the bill contains more than one subject, is pettifoggery of the worst sort. It is not like men differing over what due process means. That's important; that's vital. Our notions of due process evolve, they grow, they change as our consciousness as a community changes. But I submit, if you retain this section, you're going to retain it as the most adjudicated section of the Constitution in the future. At any time you don't like something the Legislature has done, you have this opening; you can always find someone who'll argue that the bill title wasn't clear or it contained more than one subject. And I know that this is very difficult having worked in an office where drafting was done on legislation; I know that the drafters were so beset by this monster in this section that they were sometimes inclined to make the title identical to the body of the bill. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman. I rise in support of Delegate Aronow's proposed amendment and for an additional reason. He recited, and I think correctly, that the only way any of us who are interested in the Legislature can follow the progress is through the newspaper article reporting of the titles of the bills. However, there's another very important reason why I think it is absolutely essential that the title of the bill reflect the contents of the body of that bill, and that is that our Revised Codes of Montana are frequently indexed only according to the title of that bill. If the body of the bill should happen to contain a subject matter or an item that is not reflected in the title of the bill, it simply will not be indexed and there won't be any way in which any attorney or other interested person could ever discover the contents of that bill. In response to Delegate Roeder's comment that this section is one of the most adjudicated parts of our present Constitution, I submit that's a very good reason to retain it with precisely the same language so that we won't throw 82 years of Supreme Court decisions out the window. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President. I rise in support of Delegate Aronow's motion and I rise in support of it from the point of the legislator. They have numerous bills in this Legislature and no member of the Legislature has time to read all of them. He does take a glance at the title of the bill to see what it contains. If you have a title that doesn't reflect the body of the bill, many legislators are misled because they simply don't have the time to go over all of the bills.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, would Mr. McNeil yield to a question?

**CHAIRMAN GRAYBILL:** Mr. McNeil?

**DELEGATE McNEIL:** I yield.

**DELEGATE FOSTER:** Mr. McNeil, do you not feel that the Legislature is capable of determining how the title shall be written?

**DELEGATE McNEIL:** I'm confident they are quite capable of that when they have a directive in the Constitution that requires them to do so.

**DELEGATE FOSTER:** Will Mr. McNeil yield to another question?

**CHAIRMAN GRAYBILL:** Mr. McNeil?

**DELEGATE McNEIL:** I yield.

**DELEGATE FOSTER:** Is it your opinion, then, that the Legislature would not, in fact, require that the title include the subject of the bill clearly so that the people would know what the bill was about?

**DELEGATE McNEIL:** Mr. Chairman. In response to that question, if the Constitution requires the Legislature to state a title for a bill which clearly reflects the contents, then there is no doubt that they will do so.

**DELEGATE FOSTER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Well I fail to see the need for directing the Legislature to do this. It seems to me that in the process of the response to the people that they represent, and in response to their charge of following the legislative process, that they should, in fact, write titles in bills in such a form that they're easily understood, easily codified and all the arguments that have been given; but I fail to see the need for declaring bills unconstitutional simply because the title was written wrong. It's beyond my comprehension that a bill should be unconstitutional just because the title is wrong. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. President. I rise in support of Mr. Aronow's motion. A good deal has been written into this that I personally don't support, and I'm speaking of rules for the Legislature and open meetings and things like that, because I think the public has a right to enforce that upon the Legislature themselves by their vote. However, this is something which I think should absolutely be in. Two of the largest corporations—and I'm sure most of these members already know this—maintain large staffs over here, part of whose staffs' duties are particularly assigned to read bills as they express it, just to catch sleepers that they miss—that are in the bills that they missed because they're not in the titles. It's a very serious defect in the system we have when large corporations and other lobbyists have to maintain a staff over here to go over the bill to make sure that a so-called sleeper isn't going through. Now, part of the usual legislative process is on first reading—if my memory serves me correct—on first reading, the bill is read by title only and I'm sure these legislators get just as large a volume of literature, of bills to read as we have, and there's just no possibility that any Legislature can keep up with the content of every bill in every committee over here. And they have to rely upon the titles the same as we interested observers rely upon the newspapers for the titles and pick up only the bills that look interesting to us. The sense of the previous constitutional amendment was that if someone did put something through that wasn't in the title, then the aggrieved party can go to the courts and have the bill stricken. Now, Mr. Foster's raised the point, well "Couldn't the Legislative rule provide that it should be expressed in the title?" Of course they can but if there's a violation, there is no enforcement. The court has no jurisdiction then to rule the bill unconstitutional. The bill has gone through in violation of the committee rules or of the Legislative rules but it is now a law and no one can attack it upon that grounds. But if it's a violation of the Constitution—and I appreciate Mr. Roeder having worked within that system—he says, "Well, it makes it hard to draft a bill; we have to be extra careful." Well, that's the idea; be extra careful so these sleepers don't get by and are used—in other words, legislation's going through that nobody has knowledge of; nobody has a right to come in and very often, important things are changed when the legislators who can't spend the time to read all of the bills are relying upon the title. The fact that so consistently, these matters have been brought to the attention of the courts and as Mr. Roeder says, in a large measure the courts have had to declare certain measures unconstitutional, shows just how important this safeguard is. To follow Mr. Roeder's sense, we will throw out the consititutional safeguard because it has worked so well. And the general idea is to see that the public is informed, and that's what the idea is for expressing the contents of the law within the title. I submit that Mr. Aronow is perfectly correct. This is a safeguard you shouldn't throw out the window just because it is inconvenient to someone not to express all the thoughts within the title.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Yes, I speak in opposition to Mr. Aronow's motion on the basis that this really is a lawyers' relief bill—one of those that we've been talking about for the last few days. If you will look at the decisions that have been rendered on this in the Montana Supreme Court, the court once stated that the question of sufficiency of the title of various acts of the Legislature has been before this court many times. Each case has been decided on its own particular set of facts. This must, of necessity, be the case. No single rule can be laid down which will control all cases where this attack is made. If you will check the different Supreme Court decisions, you will find blatant errors in titles that have been upheld in the Supreme Court. You'll find very minor ones that have been declared unconstitutional by the Supreme Court. For example, last year in 1971, the court found an act entitled "Dredge Mining Regulation and Land Preservation Act" unconstitutional because the body of the act discussed sluice washing plants which the court ruled were distinct from dredge mining. You have the court going into very, very nuances of what these bills actually encompass. There's several bills just in the last couple of years that have been declared unconsititutional on these very, very medium points. I would submit that since we have given the legislative session 90 days each year, that they can start taking the time to read these bills and, if not, they can make their own rule concerning the title. It has been found in a study of the bills declared unconstitutional in Montana on the title provision, that most of these cases are filed at 5 years after the enactment of these bills because someone aggrieved by this bill went back and found this little loophole. I submit to you that this is the Supreme Court determining the validity of legislation in Montana and it has not worked; and if it has worked, I'd like to know who it has worked to the benefit of; certainly not the people in all instances.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** (Inaudible) ...I wonder if Mr. Roeder would yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Roeder.

**DELEGATE ROEDER:** Yes sir, I yield.

**DELEGATE BURKHARDT:** Mr. Chairman, I would like to ask Mr. Roeder if this subsection as written were simply amended with this set of words, "which shall be clearly expressed in its title" period, and then continue the sentence with, "a law may be challenged on the grounds of noncompliance", and so forth, whether this would accomplish what Mr. Aronow is concerned about and still leave some limits on the number of years that go by before these things are challenged or does that still make a kind of keg of worms to be dealing with there?

**DELEGATE ROEDER:** Well, Delegate Burkhardt, you're asking me about whether something would satisfy Delegate Aronow.

**DELEGATE BURKHARDT:** You teach a course; I thought maybe you had some background in this.

**DELEGATE ROEDER:** I don't know what you're after. If you're asking my own feeling, no, I would like to see the whole section deleted. I think as it has come from committee, it attacks one head of the hydra, leaving plenty of room for the other one to grow and assume the dimensions that the one that they're slaying has assumed.

**DELEGATE BURKHARDT:** Well, Mr. Chairman, could I ask another question of Mr. Roeder?

**CHAIRMAN GRAYBILL:** Yes, you may.

**DELEGATE BURKHARDT:** Is it your feeling then that if a bill contains one subject, the titles will take care of themselves?

**DELEGATE ROEDER:** Again, Mr. Burkhardt, I'm not sure I understand the question. I recognize that there are real problems here. I think that we should have single subjects and the title should reflect those subjects. My point, I think is this: the Supreme Court of Montana is not the only agency or the only group of people passing judgment on the singleness of subject or clarity of title. I think we go through a lot of hocus-pocus with this thing, that these people when they put their robes on in their chambers, acquire some kind of mystical power, some kind of judicial transubstantiation power (Laughter) that gives them the exclusive knowledge and wherewithal to determine the singleness of the subject and the clarity of the title. And I submit that their judgment is no better than the Legislature's.

**DELEGATE BURKHARDT:** All right, Mr. Chairman. I know that when a professor gets on his feet, 50 minutes is the standard time (Laughter) but, you know, as a person—

**CHAIRMAN GRAYBILL:** You have the floor, Pastor Burkhardt.

**DELEGATE BURKHARDT:** Fine. (Laughter) A pastor normally gets 20 to 25 minutes. Let me say that there is a bit of scripture that says, "Beware of those who go about in long robes", and I wear a robe myself once in a while. It seems to me that if our intent is to deal fairly and not simply hide the truth in rhetoric, that a provision which calls for a bill to contain one subject probably is going to be helpful. If we're hung up with a monster, and I believe Dick Roeder; I think he's probably got a point there. I would speak in opposition to the amendment simply because common sense says that a bill that has one subject can be understood. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** During the course of this long debate, I've had a chance to peruse this document on new state constitutions and, among other things, I've found that with I think one exception, every constitution contained in this book includes an article very similar to the one that is being opposed by Mr. Aronow, and I personally feel that this is a very much needed type of amendment to our section here, and I would support Mr. Aronow's proposal. And as the debate goes on, maybe I can finish the rest of this book. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President. I think there's another aspect of Mr. Aronow's amendment that should be given some consideration, and that's the portion of it that says that "if the subject shall not be embraced in any act which shall not be expressed in the title, such an act shall be void only as to so much thereof as shall not be so expressed." That really is a savings clause to save the good legislation in the subject set forth in the title. Now, in the majority proposal, it says it shall contain only one subject. As far as litigation is concerned, there is no limitation on the amount of litigation that can take place if an additional subject is contained in the law whether it is expressed in the title or not. So, there's a lot of merit in the savings portion. If it should contain more than one subject inadvertently, or be so construed, the principle subject will not be declared void. And in all those Supreme Court decisions that you refer to, you have to remember that that also is the peoples' court. It is people, citizens, that are going there; it's not the lawyers going there for a relief although we are used to being maligned on that question. But when Mrs. Robinson or one of the others of you come to a lawyer with a grievance, just like your right to vote or anything else, you're going—that's your court; it's the peoples' court; it's not the lawyers' court. Thank you.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** Mr. President. I rise to resist Mr. Aronow's amendment or substitute motion or whatever it is. Really, I think the wording of this amendment actually makes the Supreme Court the third body of the Legislature or, in lieu thereof, the Governor of the State of Montana because of the wording clearly stated, and so forth. The Supreme Court can use this section, and has in the past, to thwart the will of the Legislature in passing legislation for the good of Montana. The Legislature is the body that's elected by the people of the state and any restriction on their right to pass legislation should be removed; and especially if the Supreme Court in the future happens to be appointed. They should not have such appellate jurisdiction or jurisdiction to declare a law unconstitutional on that vague language. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman. I'd like to speak in opposition to Mr. Aronow's amendment. Surely we don't have to tell the Legislature that they should establish a rule whereby all bills must have titles. I'm certain that that will be taken care of by the Legislature and I feel that it's the single subject portion of this section that prevents riders and sleepers, not the titles. I have the Revised Codes of Montana 1947, and in it, the single, most annotated item is this business with the titles. I feel that when experts like Mr. Freund writes in his book on standards of American legislation something to the effect that "if interests are prejudiced by precipited [sic] haste, surprise or log-rolling, a reasonable chance should be given them to attack the law." I agree that when it's based on constitutionality, we have a right to challenge. After that chance has been given and no one has availed himself of it, the violated constitutional provision becomes merely a technical loophole of escape from the law; and the Constitution, when it has this title provision, makes it possible not to protect legitimate interests, but to defeat the legislative will. And I further contend that Mr. Sutherland in his three volume work on statutory construction advises states to get rid of the title provision in their Constitution.

**CHAIRMAN GRAYBILL:** Mr. Skari.

**DELEGATE SKARI:** Mr. President. I'd like to point out that our federal Constitution has no such provision. By the way, I rise in opposition to the amendment. I think Mrs. Robinson made a good point when she said that we would give the Legislature time to read the entire bill in the future, not just the title; I think it goes without saying they should read the entire bill. We don't follow any such rule here. I'm sure we read everything through here. I think this provision—we had studied this quite a little in the Legislative Committee—I think we were quite agreed that this provision is simply used as a loophole to invalidate good legislation.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. President. I'm very concerned with the—to thank the delegates that are taking away the lawyers' relief act. I've been practicing law I think 22 years, and I've had only one case involving the constitutionality of a title. But, (Inaudible)...when they take it, they also give it. Has this body ever stopped to sit down and consider that if any provision in the Constitution is violated by a legislative act, the Supreme Court has this power that they want to take away. We start talking about 5 days' notice on hearings, but say the Supreme Court finds the 5-day notice wasn't given on this hearing and this—these rules you want to write in. Then that law is unconstitutional for your information, and if you're going to put in that there has to be a public hearing, if the Supreme Court looks over what the Legislature has done and it has found that there is no public hearing, then that law can be declared unconstitutional 1 year, 10 years, 20 years, 50 years later. When you come to getting a recorded vote in a committee, a recorded vote on each motion that moves it along, that's a violation of the Constitution and then go back 100 years and declare that law unconstitutional. Now, because you have one law, the appropriation—the title bill which many times has come up, in which legislation has gone through that wasn't expressed in the title, that's the lawyers' relief bill. And now you're going to pass—put things in the Constitution that the courts will be finding things unconstitutional for the next 100 years on the most flimsy kind of pretexts, and you're telling us you're going to take out the lawyers' relief bill. You better get down and start looking at this stuff with some sense. You're putting in all of this stuff about recorded votes, 5 days' notice, public hearings, any one of which can be used as a gimmick to declare a law unconstitutional, and then you tell us we've got to throw out this lawyer's relief bill. Everything's got to be present in the act. This is something that lawyers use to put it over all the time. Well, I'll tell you, you're putting things in here that lawyers will get rich on for the next 100 years if you just keep on going the way you're going. (Applause)

**CHAIRMAN GRAYBILL:** Mr. Campbell.

**DELEGATE CAMPBELL:** If I may, Mr. Chairman, with a little less emotion, approach the issue that's before us in the Convention. Although many of the things that Delegate Holland has said, I'd agree with, I'm not sure which way you approach the amendment. I feel that certainly there are things we want to avoid putting in the Constitution that will be a loophole, a basis for eliminating good legislation. I think that many of the objections raised are valid. I don't believe that this amendment should be in the Constitution. I think that the provision that one title would be covered certainly is enough protection, and I think the Legislature—one subject—will in the future take the time to go over this. I'm certainly not threatened as a lawyer or as someone who does read the newspaper accounts of what the Legislature is considering. Certainly, because corporations can hire people to sit here and look for loopholes that might be coming through, certainly is no real incentive, I think, to consider putting this in. I would say that we didn't put a 5-day notice in because we felt that this would be an undue restriction later for someone to say there was only 4½ days' notice given and then, at a later date, this should be unconstitutional. I would agree that this would be no threat to the lawyers to leave this out, and I certainly believe it has no place, and I would appose the amendment. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I would like to point out a fact which may not have come to Mr. Holland's attention since he was absent on Saturday, that we did indeed delete proposed subsection 4 of Section 10 for exactly the reason that we were afraid of the trouble that it would create if it were put in the Constitution. (Inaudible) we agreed with the principle.

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman. A few days ago one of the delegates observed that it's sometimes difficult in this body to tell whether we're talking about the same Legislature, and we consider one section and we give it a great deal of power; and then we consider the next section and we tie it up entirely. It kind of reminds me of when we were kids, we used to divide up pieces of candy, and we'd go one for you and one for me. I think that's what we're doing here. The last section that we passed over was the one for us and I guess this is the one for them. It's been about 5 days now since we've started this debate and so far as I can tell, we haven't considered a single constitutional question. What we're doing here is legislating. If that's what we've decided that we ought to do, that's fine. I've got some more legislation I'd like to drag up and we can put that in there. But it seems to me that we're not considering constitutional questions. We're considering matters which are almost entirely legislative. We've adopted the Enabling Act for this Constitution. We spent a day doing that. We spent a day on Suffrage and Elections, which are matters almost entirely of legislative concern. When we came to the constitutional question, whether we should have one house or two and whether we should put it squarely to the people or not, we ducked that one and went around and we started back on the legislation dealing with the Legislature. I submit to you that we ought to dispose of these questions and get to the real questions. What kind of Legislature are we going to have here?

**CHAIRMAN GRAYBILL:** Very well. The issue before you is Mr. Aronow's amendment to Section 4 which places a new sentence—or new clause—in the section so that line 24 on page 5 reads, "shall contain only one subject" and then the new amendment, "which shall be clearly expressed in its title but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be expressed."

**DELEGATE ROBINSON:** Mr. Chairman, may we have a roll call vote?

**CHAIRMAN GRAYBILL:** We'll have a roll call vote on this issue. So many as shall be in favor of the amendment, please indicate by saying Aye. So many as shall be opposed, please indicate by voting No. Have all of the delegates voted? Does any delegate wish to change his vote? The vote will be closed. Please tabulate the vote.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Absent |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Absent |
| Choate | Nay |
| Conover | Absent |
| Cross | Nay |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Aye |
| Chairman Graybill | Aye |
| Gysler | Aye |
| Habedank | Aye |

| | |
|---|---|
| Hanson, R.S. | Aye |
| Hanson, R. | Absent |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Absent |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Absent |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Absent |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Absent |
| Schiltz | Aye |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Absent |
| Speer | Nay |
| Studer | Absent |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Excused |

**CLERK HANSON:** Mr. Chairman, 52 delegates voting Aye, 37 voting No.

**CHAIRMAN GRAYBILL:** 52 delegates having voted Aye, this amendment passes. We're now considering subsection 4 as amended.

**CLERK HANSON:** "Mr. Chairman. I move to amend—"

**CHAIRMAN GRAYBILL:** This is another amendment by Mr. Aronow. Go ahead.

**CLERK HANSON:** "—Section 11, subsection 4, page 23, line 11 of the Legislative Committee Proposal by striking and deleting the last sentence commencing with the words 'a law may be', through lines 12, 13 and 14". Signed, Aronow."

**CHAIRMAN GRAYBILL:** The purpose of the amendment proposed by Mr. Aronow is to strike the last sentence of proposed subsection 4 as amended. In other words, it would strike the language, "a law may be challenged on the grounds of noncompliance with this section within 1 year after its effective date but not after that period." Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman. The reason for offering this amendment is that the—well, as an example—this last Legislature that met, I guess in three sessions, we didn't get at the pocket parts or the codes from the Legislature until, I believe, it was in September. And that Legislature met in early January and no lawyer, no person, had the work of that Legislature on their desk until sometime in September. Well, how does one know whether an act of the Legislature affects their rights? It may not only—it isn't only corporations and big interests, but it's a lot of the common people too that have some problem insofar as acts of the Legislature are concerned. It may be a right to a small homeowner; it may be a right to the wage earner; it may be a right to the disadvantage of the minority groups and they don't have a staff. They're unable to determine until the need arises. Now, our court has held that periodically when the laws of the State of Montana are codified, that any defects in title or other defects in the passage of the bill through the Legislature are cured so that you have a bill in statute of limitations anyway. And the codification of the law takes place periodically about every [illegible] years or so, as the legislative act that codifies the statutes of Montana and that's the end of the time within which you can bring any litigation, or an aggrieved party can appeal to the courts for relief. I submit that the period of 1 year, with annual sessions of 90 days or longer, is not ample time to the average man or woman to make application for relief from an unfair or an unjust act of the Legislature. Thank you

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman, I rise in opposition to Mr. Aronow's present amendment. I had first called to your attention that the 1 year starts after the effective date, and usually the effective date on most of these laws is July 1. If it's effective prior to that, you have notice of the prior effective date. I would never have considered voting for the first amendment had I been of the opinion that the last sentence would have been eliminated. I think this answers the questions which were raised from the floor about objections being made 100 years or 10 years after. If you're going to object about the fact that it was not in the title where you have said it shall have one subject, it shall be in the title, then I think 1 year is a good time to do it. If you don't do it in that time, I think the Supreme Court should not be required to consider the matter further. I consider this last sentence our protective clause for the atrocities that Dick Roeder would contend would occur by reason of having to put the subject into the title.

**CHAIRMAN GRAYBILL:** Mr. Brazier.

**DELEGATE BRAZIER:** Would the delegate, Mr. Loendorf, yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Loendorf, would you yield?

**DELEGATE LOENDORF:** I yield, Mr. Chairman.

**DELEGATE BRAZIER:** Mr. Loendorf, did your committee, in deliberating upon this proposal, consider whether the Legislature would have authority to enact a statute of limitations on the subject matter? And if so, would you please tell us your impressions of their deliberations?

**DELEGATE LOENDORF:** Our committee did not deliberate on that, Mr. Brazier.

**DELEGATE BRAZIER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Brazier.

**DELEGATE BRAZIER:** Would the delegate, Mr. Loendorf, yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Yes, I'll yield.

**DELEGATE BRAZIER:** Mr. Loendorf, did your committee, in considering the merits of this proposal, consider what impact this provision would have upon the right of a citizen to raise the constitutional issues as a defense at a later time in an enforcement action brought by an agency of the government? And if so, would you tell us your impressions of the committee deliberations?

**DELEGATE LOENDORF:** Right. I think our committee felt this way. We enact this provision; we provided a statute of limitations, I think, for the exact reasons Mr. Habedank has stated, that after a law is published for a definite period of time, certainly nobody should be able to say after the law has been in effect for a certain period of time, no one should be able to say, "Well, we're unaware of it." Chances are they are aware of it and the odds are that they are. And we felt that this was really a compromise, I think, adding this last sentence between those who wanted to delete the section entirely, and those who felt it should be retained. And we felt by adding the last sentence, we really got away from the problem created by this section of having suits challenged—or laws challenged years later when we felt the party had very reasonable notice that they were in effect.

**CHAIRMAN GRAYBILL:** Mr. Brazier.

**DELEGATE BRAZIER:** Would the delegate, Mr. Loendorf, yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** I yield.

**DELEGATE BRAZIER:** Mr. Loendorf, then do I understand correctly, that it is the intention and thrust of the proposed provision to foreclose any defenses based upon the constitutional merits of any statute?

**DELEGATE LOENDORF:** No.

**DELEGATE BRAZIER:** Constitutional merits of any statute.

**DELEGATE LOENDORF:** Could you explain?

**DELEGATE BRAZIER:** Well, constitutional procedural defects in the enactment of the statutes.

**DELEGATE LOENDORF:** Yes, it is after a year period.

**DELEGATE BRAZIER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Brazier.

**DELEGATE BRAZIER:** In view of Mr. Loendorf's responses, I rise in support of Mr. Aronow's proposed amendment on the grounds and for the reasons, among others, that it's been my experience that as a matter of fact, the great number of the citizens of Montana are not, in fact, aware of the contents of legislative enactments and that most of them make a horrifying discovery some many years down the road when "big brother" moves in. And I personally feel that the right of a citizen to any defense should not be foreclosed because of any ignorance, either by virtue of inaction or diversion or distraction. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. President. I find words being used here in a way that I find hard to understand or clear up and maybe someone can help me. It seems to me that when it's a matter on title of a bill or on words, there's a limitation. It also seems to me at the same time, when it's a question of unjustice or injustice or constitutional defects, that could happen anytime. And for those that put this together, I think they muddy our thinking. I get the impression that it's on poor title or on words that the 1-year limitation comes. I submit that's a good idea. As a matter of constitutional defects or injustice, that's anytime; that's what the courts are for.

**CHAIRMAN GRAYBILL:** Very well. The issue before you is on Mr. Aronow's second amendment to subsection 4. The text, the thrust of which would be to eliminate the last sentence from Section 4. The language eliminated is, "a law may be challenged on the grounds of noncompliance with this section within 1 year after its effective date but not after that period."

Mr. Romney.

**DELEGATE ROMNEY:** (Inaudible)...and ask for seconds. (Seconds stand)

**CHAIRMAN GRAYBILL:** We'll have a roll call vote with plenty of seconds. So many as shall be in favor of Mr. Aronow's amendment eliminating the last sentence, please vote Aye. So many as are opposed, please vote No. Have all the delegates voted? Does any delegate wish to change his vote? Will the clerk take the ballot?

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Absent |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Absent |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Absent |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Aye |
| Garlington | Aye |
| Chairman Graybill | Nay |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |

| | |
|---|---|
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Nay |
| James | Absent |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Absent |
| Kelleher | Absent |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Absent |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Absent |
| Schiltz | Aye |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Aye |
| Speer | Nay |
| Studer | Absent |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Absent |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Absent |
| Woodmansey | Absent |

**CHAIRMAN GRAYBILL:** Mr. Clerk, has Mr. Felt voted on the machine? He says he votes No.

**CLERK HANSON:** Mr. Felt voting No. 33 Aye, 54 No.

**CHAIRMAN GRAYBILL:** 54 people having voted No, the amendment fails. Therefore, we're not considering subsection 4 as amended. The subsection now reads: "Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, which shall be clearly expressed in its title. But if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed. A law may be challenged on the grounds of noncompliance with this section within 1 year after its effective date but not after that period." That's the way the section reads now. Is there further discussion?

Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I move to amend Section 11, subsection 4, in line 13 to change the word, "one", to the word, "two", and add "s" to make "year" plural.

**CHAIRMAN GRAYBILL:** Chair will accept that amendment without writing. Is there discussion on that proposal? If not, the issue will be on Mr. McNeil's amendment to the last sentence of Section 4, which has the effect of saying that a law may be challenged within 2 years instead of within 1 year after its effective date, but not after that period. So many as shall be in favor of that amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it and so ordered. Very well. We're on subsection 4 again as amended. We have the Aronow language in about the title. We have the last sentence in, but now it says "within 2 years." Is there further discussion? Very well, members of the committee, you have before you, on the recommendation of Mr. Nutting, that when this committee does arise, subsection 4 of Section 11, be adopted as amended. All in favor of that motion say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Subsection 4 is adopted as amended. Will the clerk read subsection 5 please?

**CLERK HANSON:** "Subsection 5: General appropriation bills shall contain only appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on public debt and for public schools. All other appropriations shall be made by separate bills, each containing but one subject." Mr. Chairman, subsection 5.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you subsection 5.
Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman, I move that when this committee does arise and report after having under consideration Section 11, subsection 5, that it recommend the same do pass. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** Subsection 5 is identical to Section 33 of our present Constitution. I shouldn't say identical. It was the wisdom of some of the attorneys that we put it in a positive fashion rather than a negative. So, the words have been changed to make it a positive statement rather than a negative one, and the word in line 4 has been changed to "containing", rather than "embracing". But essentially, it is the same section. It provides that general appropriation bills shall contain only appropriations for Legislative, Executive and Judicial Departments of the state, interest on the public debt and for public schools. All other appropriations shall be made for it by separate bills and contain only one subject. It's purpose of this provision that an appropriation should not be slipped into a general appropriation bill, and that if it is for a specific purpose, it should be so stated, and that it should be in a separate bill and contain only that particular subject. Thank you.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you for your consideration on the motion of Mr. Nutting, subsection 5. His motion is that when this body arise and report, that subsection 5 be adopted. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.
(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Will the clerk read subsection 6?

**CLERK HANSON:** "Subsection 6: No appropriation shall be made for religious, charitable, industrial, educational or benevolent purposes to any private individual, private association, or private corporation not under control of the state." Mr. Chairman, subsection 6.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you for your consideration, subsection 6.
Mr. Nutting

**DELEGATE NUTTING:** Mr. Chairman, I move that when this committee does arise and report after having under consideration Section 11, subsection 6, that it recommend the same do pass. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** This section is essentially the same as Section 35 in our present Constitution. At the request of the Local Government Committee, the word, "community", has been removed and the last phrase, "nor to any denominational or sectarian institution or association", we felt would be corrected by adding the word, "religious", on line 10, so that it would read, "No appropriation shall be made for religious, charitable, industrial, educational or benevolent purposes". Now, this next portion reads, "purposes to any individual—private individual, private association, or private corporation not under control of the state." It was the feeling of the committee that it could conceivably be that we could run into problems in that as the old section read "corporation" and, if we're talking about municipal corporations, it would—we would possibly get into trouble there, where we would be reappropriating federal money to a city or town. And the same thinking was followed in relation to community. And so, we—that portion of it was stricken from the proposal as is. We feel that it essentially rules—brings in the things that we want in this particular section and yet has the flexibility to allow for the things that have probably been done in the last few years but not contested. Thank you.

**CHAIRMAN GRAYBILL:** Members of the committee.

Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, fellow delegates. I move that this section be deleted.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman. It is my view that the legislative body of this state must be responsible for the distribution and taxation of funds. And I feel it's entirely inappropriate to state in the Constitution, in this particular case, how these funds shall be distributed. I feel that with the changing times, the Legislature should have the opportunity of stating how the taxes shall be spent. And if we, as a body here, try to delineate where the funds will be spent and where they will not be spent, we are in a sense tying the hands of the Legislature in a way that we should not tie them, in my opinion. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. You have before you the motion of Delegate Foster to amend [sub] Section 6 by deleting it. So many as shall be in favor of that motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as shall be opposed, please say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and so ordered. We're now back on the basic subsection 6.

Mr. Arbanas.

**DELEGATE ARBANAS:** Would Delegate Nutting yield for a question, please?

**CHAIRMAN GRAYBILL:** Delegate Nutting.

**DELEGATE NUTTING:** Yes.

**DELEGATE ARBANAS:** I found in your explanation some of the information that I wanted kind of unsaid. Would you kind of give me a list of the things that are implied by the deletion of "community"? What's opened up by this exclusion?

**DELEGATE NUTTING:** The problem here is that we were feeling mainly about cities, and it was also involved unincorporated towns; and that was our main reason for removing the "community" in that we find that numerous instances where funds bypass the Legislature. Actually, they have to go through and be reappropriated, but essentially the money is from federal direct to communities. And we feel that there is definite trend in this manner and that it would, in effect, rule out the fact that the Legislature could (Inaudible) merely pass these funds through by appropriation, which could become necessary in the future; and for that reason, this "community" word was taken out. Does that answer your question?

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Would Delegate Nutting yield to a question?

**DELEGATE NUTTING:** Yes.

**DELEGATE BERG:** I note that you have inserted the word "private", with reference to individuals, corporations and associations, and although I think you made some explanation of that in your early remarks, I should like further explanation as to why you distinguish between a public and a private corporation or a public association and a private association.

**CHAIRMAN GRAYBILL:** Mr. Berg, hold your mike down and we'll hear you better.

**DELEGATE BERG:** I would like you to distinguish, if you can, between why you do distinguish between public and private corporations by this addition.

**DELEGATE NUTTING:** The feeling is that we were thinking more of city charters and that sort of thing as public corporations. While we do not feel that a Legislature—that an appropriation rather—should be made for the definite benefit of a private sector—of the—citizenry, whether it be individual, an association or a corporation. We felt that that was a justifiable distinction.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Would you yield to a further question?

**DELEGATE NUTTING:** Yes.

**DELEGATE BERG:** Perhaps this is just dealing with words, but I don't understand the distinction between an individual and a private individual.

**DELEGATE NUTTING:** They're really—those are not my words but that was the decision as it came out of the majority—the committee report.

**DELEGATE BERG:** One more.

**DELEGATE NUTTING:** I would defer to, I believe, Mr. Harper—I think. I can't really remember just whose words those are but I would...

**DELEGATE BERG:** Is it the purpose of the committee to permit expenditures or to permit appropriations for, for instance, a religious, quasi-public corporation?

**CHAIRMAN GRAYBILL:** Hold that mike down, Mr. Berg.

**DELEGATE BERG:** A religious, quasi-corporation. Public corporation.

**DELEGATE NUTTING:** It is not the intent of the committee to allow that, no.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Would Delegate Nutting please yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** Yes, I would.

**DELEGATE JOYCE:** Did your committee consider that maybe this section is making unconstitutional our present welfare laws? And I'll get to the point. Say, we read the section this way: "No appropriation shall be made for benevolent purposes to any private individual." Was it the intent that if that were construed as violating the welfare laws that we have on the books—would that be the intent of the committee?

**DELEGATE NUTTING:** No, it was not the intent. The Section 35 is, under the wording, is much more stringent. And we had hoped that we could accomplish by this section—let's say, for instance, the foster home situation, in which the payments actually go to the welfare; they finish up with the welfare beneficiate. And it was our intent to try to write this section so that it would not preclude that sort of situation.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** Mr. Chairman. Would Delegate Nutting yield to a question?

**CHAIRMAN GRAYBILL:** Delegate Nutting.

**DELEGATE NUTTING:** Yes.

**DELEGATE MONROE:** I'm wondering if you could help me on this. During our last Legislative Session in 1971, I understand that there was a bill having to do with group homes, that they might be set up; but no appropriations were made at that time. Now, I'm not under the understanding that those were under the control of the state. Let's say a group home was set up in a particular community; it was done as a receiving home or a foster home or what have you but they call it a group home. But it was just maybe a city or a county or what have you, but it really wasn't under the control of the state. Would your provision here prohibit any funds—let's say the Legislature, in the future, might want to fund a group home in that particular area; would this prohibit that?

**DELEGATE NUTTING:** We had hoped that we had so worded it in the new subsection that it would not be as restrictive in that—on those particular measures as Section 35 of the old Constitution. We hoped that the wording, as it would now be interpreted, would allow that, yes.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** As the old Constitution is worded, would you declare that action by the 1971 Legislature unconstitutional in setting up—or if they had appropriated funds, I should say—would you, since that was not under the control of the state—a group home in a community, for example—would you consider that unconstitutional, if they had appropriated some funds?

**DELEGATE NUTTING:** We had considerable difference of opinion in the committee, as some of us assumed that as long as the appropriation was under the control of the state, that then you had the...then you were within the conditions of our old measures. Some said that it was not and that by changing it to our present wording, that we would arrive at that conclusion. However, we did not have unanimity in the committee on that interpretation.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Yes, Mr. Chairman. I would like to point out to Mr. Monroe the 1971 act passed by the Legislature, the youth guidance home. These homes were not under direct control of the state, but money was not appropriated to them directly. Money was appropriated to the Department of Institutions, which is under direct control of the state, and then the Department of Institutions can do with the money as they see fit.

**CHAIRMAN GRAYBILL:** Mr. Drum.

**DELEGATE DRUM:** Mr. Chairman. I would like to amend Section 11, subsection 6, to read at the end, after the complete wording, "without a two-thirds vote of the members of each house of the legislative assembly." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Drum. You'll have to send that in writing to the rostrum.

**DELEGATE DRUM:** The reason I suggest this amendment is that the State Lands Department is now cataloging all of the state lands which have a recreational value. As time goes on, this department is going to locate the areas that really have a recreation potential to, not only the people in this state, but to people who wish to visit our state as tourists. Now, the State of Kentucky some years ago has taken a posture or a position as a state, where they will build such things, such recreational areas, such as campgrounds, such as ski areas—anything that is on the state-owned land that has a recreation potential; the state will go ahead, appropriate money, put a facility on it, and then they will turn around and lease it to someone in private enterprise who wishes to develop—further develop the potential and manage the thing. The state then receives a rental or a percentage of the income of this facility. Now, I'm not suggesting today that we should move in this area immediately, but I think at some point down the road, the state may find itself in the position of being able to capitalize on some of these state lands that are owned by the people of the state, and may bring some tax relief to the taxpayer of the state by creating a greater income to the school trust fund in this manner. So I think if we could leave it in the hands of the Legislature, but make it a pretty firm vote, two-thirds vote, it may give more permissiveness and more latitude of movement for the development of our state in the years ahead. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I wondered if Delegate Drum would yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Drum.

**DELEGATE DRUM:** Yes.

**DELEGATE BATES:** Mr. Drum, in this regard of this type of development, would it not be under the control of the state and under the Legislature, and could this be done under the present situation?

**DELEGATE DRUM:** Well, this is the thing that bothered me a little bit, Miss Bates, that under the control if it were to be leased—assume, for a minute that the Big Sky development is going to be of benefit to Montana; make that assumption—second, make the assumption that all of the land that is going to be used over there would be state land. Then the third assumption I would like you to make is that if the state were to come up with a certain amount of money, that there may be some federal matching money that would make it real desirable to develop that entire area. Now the state probably is not going to want to manage this thing, not going to want to run it, but they're going to want to know that they're going to get a million dollars a year income from that property on some basis. But the control of that is not going to be in the hands of the state; it may be in the hands of professionals who lease it and manage it on some long-term basis. And I foresee this type of thing happening down the road. I don't think—I may not live long enough or be around long enough to see it happen, but at some point in the future, Montana—and I think you all will agree with me—has such a potential, a huge potential that at some point in the future may be tapped for summertime use by people in other parts of the country. And it may be one of the real forms of tax relief that we someday get by bringing this money in, and not bringing the school children or the old folks along with them. But I would say, to answer your question, Mrs. Bates, that the control as is stated in this—the control of management would not be in the hands of the state. And it might be kind of a cumbersome word, and I think the two-thirds vote may eliminate the cumbersomeness of that phrase.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman. I would appreciate having that amendment read. I'm not quite following all the conversation.

**CHAIRMAN GRAYBILL:** Very well. subsection 6 reads: "No appropriation shall be made for", and then it lists all these things that it can't be made for, "not under the control of the state" and then Mr. Drum has added, "except upon a two-thirds vote of the members of each house of the legislative assembly." So that, in other words, it would have the effect of an exception to subsection 6 that if two-thirds of the members did, then they could appropriate money for those other purposes.

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman. I thought that was what I heard. First place, we're dealing with a unicameral measure, which wouldn't leave two houses; and in the second place, it could go back to the thing we've eliminated as far as constitutional amendments is concerned. If this is to be added, I think it should be upon a vote of two-thirds of the members of the Legislative Assembly whether one or more bodies, so it's in line with what we've previously done. And I would move that a substitute to Mr Drum's amendment to that effect.

**CHAIRMAN GRAYBILL:** Mr. Habedank has moved that the language be changed from two-thirds of the members of each of the houses of the Legislature to two-thirds of the Legislative Assembly. Is there discussion of that issue?

Mr. Leuthold.

**DELEGATE LEUTHOLD:** I just rise to oppose the amendment. We recognize that this is a restrictive section but I think it's very important that we do have it in there, and to accept this amendment in any form, would weaken it so that it would be almost meaningless. Therefore, I oppose the amendment.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** In speaking to his amendment, Mr. Drum was using the illustration of recreational use of our land. There already is the authority for that kind of management of state lands. We spent quite a bit of time discussing this in our public lands section of the Education.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt, just a minute, maybe you misunderstood me. I think we must put Mr. Habedank's amendment unless there is objection. You're not speaking to the two thirds of the

**DELEGATE BURKHARDT:** Well, it seems to me that the force of the argument for the amendment and the correction of the amendment—or rather the reamendment—is related to the material that Mr. Drum presented. I wanted that clarified before we made some kind of a vote on the wrong issue.

**CHAIRMAN GRAYBILL:** All right. Proceed.

**DELEGATE BURKHARDT:** It seems to me that we already have this kind of authority in the state lands board and they're using a multiple use theory based on the principle that the best income may be derived by the development of the resource. And that I submit to you that this motion that he makes may still be desirable, though I would not support it personally, but it has nothing to do with freeing us up for recreational use of our resource.

**CHAIRMAN GRAYBILL:** Mr. Drum

**DELEGATE DRUM:** Mr. Chairman. The authority I think that Mr. Burkhardt refers to is a bill which I was one of the authors of in the 1967 Legislature, which permits 2½ percent of the income from the school trust fund to be used by the land board to assist in funding the development of these state lands. And it has been pretty well agreed that this has been good legislation; it is working well and I think your committee heard considerable testimony on it. However, I don't believe it attacks the principle of the situation we have here. The previous legislation allows the state to act as a good landlord of its lands. If a person is leasing state land and says, "I want to drill a well on state lands which will increase the value of that land", will the state participate? The state can go participate in the drilling of the well. But I think the thing that I am addressing my comments to, is the possibility in the future, that there may be such things as ski runs or big recreation areas which people would come in and lease on a very satisfactory return basis to the school fund program, and the state would not necessarily be involved in the actual control or management. But I think it refers itself to the amount of funds available and the principle of releasing that control and funding it without the control

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. Chairman. Would Mr. Drum yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Drum

**DELEGATE DRUM:** Mr. Wilson.

**DELEGATE WILSON:** I take it you are assuming that the present Section 11 precludes what you're talking about?

**DELEGATE DRUM:** Mr. Wilson, I feel that it does, yes, it says unless it were amended by the people or unless the Constitution were amended. It says, "No appropriation shall be made", and when you say "No", that's pretty all-inclusive.

**DELEGATE WILSON:** Mr. Drum. Mr. Chairman, would Mr. Drum yield to another question?

**DELEGATE DRUM:** Yes, Mr. Wilson.

**DELEGATE WILSON:** Under your amendment, don't you think that you're changing the intent of the Section 11?

**DELEGATE DRUM:** I think, Mr. Chairman, Mr. Wilson, the intent of Section 11 that the state will never, ever become involved in the development of any private investment, even if it is on state-owned property or on government property; and I think that if we can leave this judgment to the Legislature with a good affirmative two-thirds vote, I think we are giving a little latitude to the legislatures of the future. But I think if Mr. Huntley or the Big Sky people had come out in our hypothetical case, whether you agree with it or not, there will be more people of that type who may offer an opportunity for Montana to get tax relief through this type of money. If it is left the way it is, the Supreme Court, the state Legislature and everything else is just going to say, "Sorry, we can't work with you," and the state land board is liable to say, "We sure would like to work with you, but there's no possible way we can do it." And what I'm saying is have faith in the Legislature, at least two-thirds of them, make the right decision.

**CHAIRMAN GRAYBILL:** Mr. Wilson, will you use Mr. Skari's mike please. Just come around the desk there. Your mike picks up the radio station. Let's just—(Laughter)

Mr. Wilson.

**DELEGATE WILSON:** Mr. Chairman. Fellow delegates. I think the intent of this thing is pretty well spelled out, and that if Mr. Drum wants to include this in another section, then I think this would probably be appropriate. But I think that we as delegates, should take a pretty good look at what we're doing here and the intent of this section that we're talking about, give it due consideration.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman. I would like to explain the effect of my amendment. I am not in favor of Mr. Drum's amendment in the first place, but if it does pass, I think it should refer to the Legislative Assembly in a unicameral measure rather than in both houses. I would call to your attention that if his amendment goes through, one of the colleges in which I'm very much in sympathy, Rocky Mountain College, could receive an appropriation upon a vote of two-thirds of the Legislature; Carroll College could receive an appropriation upon a two-thirds vote of the Legislature; and I really don't think that this is what we have in mind in enacting a two-thirds vote of the Legislative Assembly. So for that reason, I oppose the entire proposition. But if we do accept that item, then I think my amendment is in order.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** Mr. President. I rise in favor of Mr. Drum's motion. I don't know what—I don't have a crystal ball and I can't read what's going to happen in the future—but I notice the relationship that the federal government has with the State of Montana, and the State of Montana has with a number of private corporations. For example, OEO funds nationally come to the State of Montana, let's say in a block grant and then, in turn, this money is contracted out to different private corporations in many of the different communities around the State of Montana, and those are federal funds, of course. But who's to say if something like this isn't going to happen in maybe other areas, rehabilitative other than social service, recreational or what have you, in the future? And I would hate to see something restrictive like this where it says no appropriation can be made. I'm in favor of Mr. Drum's amendment that says upon two-thirds vote of the Legislative Assembly. I would hate to see anything restrictive where some very positive things might come about in the future of Montana with state-appropriated funds.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman. I think the committee had one thing in mind, that was, we were writing this section on bills. We're now dealing with the section on appropriation bills. We have just completed writing the section that tells how general appropriation bills must be set up and that no other appropriation bill should contain more than one subject, and so forth. We are now continuing in a separate paragraph on appropriations. I think this is the point we want to stress. Now, the issue is, should any appropriation be made by the state Legislature to any private person or agency of any type not under the control of the state. That was the issue as we saw it. We tried to use words that would pretty well hedge that in but that's the issue. Should an appropriation be made by the state Legislature out of tax moneys to any agency or person not under the control of the state? In other words, that appropriation ought to go for state agencies. It may be very commendable, for example, it may be a very worthwhile person, a very worthwhile private corporation with a good deal that might even make something for the state, but should the state, should the Legislature, ever be in the business of making appropriations to anything other than public agencies? That's the question as we saw it.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman. Would Mr. Harper yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Harper

**DELEGATE HARPER:** Yes, I'll yield.

**DELEGATE ARONOW:** Mr. Harper, if this is what you had in mind, why did you change the language of existing Section 35 of the present Constitution which has been interpreted by the courts and apparently these matching funds have been utilized and all these things have been done?

**DELEGATE HARPER:** Mr. Aronow, Mr. Chairman. Mr. Aronow, the committee, as Mr. Nutting said, did discuss that. The Local Government Committee came and said as they read this, there might in the future be some misunderstanding of the word "community," also the word "corporation," in the sense that it may be a municipal corporation or some kind of local community that was, in fact, government; and therefore state might find this interpretation. Though you are correct as we discovered that that kind of misinterpretation had never been applied in the past. And so, it was on this basis that we were trying to find some kind of suitable wording to retain the original intent of Section 35 of Article V and then to meet one other objection which perhaps we have not met, that actually the way present Section 35 reads, it almost implies that an appropriation has to go to some person or corporation or community under absolute control of the state. You notice we took out the word "absolute". We could not imagine what person or corporation might fit in that term, although legally, maybe we did not improve it. This was our line of reasoning, Mr. Aronow, and other members of the committee might want to comment further.

**CHAIRMAN GRAYBILL:** Mr. Aronow

**DELEGATE ARONOW:** Mr. Harper. I notice that under the annotations to Section 35, that a great deal of leeway has been made by the courts, like seed grain contracts, other things, and when you change the language of the section, then you leave it wide open for additional interpretations to be made by the Supreme Court. If you adopt the existing language, you also adopt the existing body of law interpreting that section, and I would think it would be the part of wisdom and safety to utilize the language that's been interpreted, that we know what it means, that we've been able to live with, we've been able to accomplish the things that we want to accomplish and change for changes' sake doesn't appeal to me. In other words, I don't like to take off in the bright blue yonder without a compass and not know where I'm going or where I've been. And if it's just—if this is all that the committee tried, I recommend and I think I'll make a motion in substitution of all other motions, to substitute the language of the existing Constitution in Section 35 for the language appearing in the section under discussion.

**CHAIRMAN GRAYBILL:** Subsection 35 of what article? Mr. Aronow.

**DELEGATE ARONOW:** Article V.

**CHAIRMAN GRAYBILL:** All right. The issue is now on the substitute motion of Mr. Aronow that we substitute for the language in subsection 6, the existing Section 35 of Article V of the Constitution.

Mr. Brown.

**DELEGATE BROWN:** Mr. President. I rise in support of Mr. Drum's amendment. I wasn't for Mr. Foster's move to delete this article. I've sat here for several days now and might as well give my philosophy. I think that this body has turned into a legislative and rulemaking convention. We're showing our distrust of the Legislature like they did in 1899. I can see where future generations may want to appropriate money to private hospitals or join in with funds like the Ford Foundation for private research, for education or other purposes. As far as aid to parochial schools, that can be covered under the Bill of Rights or under the educational provision. This is completely restrictive. We're trying to legislate for the future. It should be deleted, but Mr. Drum's amendment is better than nothing, so I rise in support thereof.

**CHAIRMAN GRAYBILL:** Mr. Toole

**DELEGATE TOOLE:** Mr. President. I was out of the room and this may have been mentioned, maybe not, but under the Section 4—Section 6—such events as the Olympic Games and similar events could not be held in Montana, the way they're now being financed.

**CHAIRMAN GRAYBILL:** Very well. The issue before you is Mr. Aronow's substitute motion that existing—that the majority reports subsection 6 to Section 11 be deleted—and that Section 35 of Article V of the present Constitution be placed there in place of it. For what purpose do you rise, Mr. McNeil?

**DELEGATE McNEIL:** To ask for a roll call vote and ask for the necessary seconds. (Seconds rise)

**CHAIRMAN GRAYBILL:** All right. We'll have a roll call vote. So many as are in favor of Mr. Aronow's substitute motion, please indicate Aye on the voting machines and so many as are opposed, indicate No. All the delegates voted? Any delegate wish to change his vote? Please take the roll call.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Aye |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Aye |
| Cross | Nay |
| Dahood | Nay |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Absent |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Aye |
| Garlington | Aye |
| Chairman Graybill | Nay |
| Gysler | Absent |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Absent |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Nay |

| | |
|---|---|
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Nay |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Absent |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Aye |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Excused |

**CLERK HANSON:** Mr. Chairman, 40 delegates voting Aye, 54 voting No.

**CHAIRMAN GRAYBILL:** 54 delegates having voted No and only 40 voting Aye, the motion fails. We're now on Mr. Habedank's motion that the language be changed to say "two-thirds of the legislative assembly" instead of "two-thirds of each house of the legislative assembly." Is there further discussion on that subamendment?

Mr. Ask.

**DELEGATE ASK:** Mr. Chairman, I was on a Local Government Committee and we went to the Legislative Committee and requested that the word "community", be stricken from the old section. And the reason for that was that we were concerned about revenue.

**CHAIRMAN GRAYBILL:** Mr. Ask, I don't mind you discussing that but we're only discussing whether it should say "two-thirds of the legislative assembly" or "two-thirds of each house of the legislative assembly." Now, if your discussion is germane to that, okay, but I'm going to dispose of that motion next if I can.

**DELEGATE ASK:** I was going to go into that but I will pass the other.

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE ASK:** I'm opposed to the amendment to allow two-thirds of the Legislature to allow appropriations for this item. I think, by doing that, we're opening up this entire section to appropriations for religious, charitable, industrial development. I don't think that was the intent of the members of the original Constitution, and it's certainly not the intent of the committee. And I don't think it's the intent of this body here to open this. If we're going to do anything, we ought to leave it out. But I don't think we should leave it to two-thirds vote of the Legislature, because you're saying you can't do it yet you can do it. And I don't think this should be done in this particular case.

**CHAIRMAN GRAYBILL:** Mr. Drum.

**DELEGATE DRUM:** I would like to address some comments to Mr. Habedank's amendment. I believe, really, we would do the right thing if we would give permissive language to this section. I think we should make it very difficult for it to happen and I think if we say two-thirds of the Legislative Assembly that, we are—if there are two houses, then a total vote, it could be construed, as one house being all for it and they may override the other house. I think it should be two-thirds vote of each assembly and it makes it that much more difficult. But to Mr. Ask, I would say that Mr. Brown I believe has satisfied me that the Bill of Rights and the Educational Article is going to contain adequate protection that this is not going to be used by Rocky Mountain College. Thank you.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Habedank's amendment that the language be two-thirds of the Legislative Assembly instead of two-thirds of each house of the

Legislative Assembly. So many as are in favor of that amendment say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as opposed, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and Mr. Habedank's amendment is defeated. Now, we're on the basic Section 4 as amended by Mr. Drum—subsection 6 of 11 as amended by Mr. Drum—and his language would add the following clause after the subsection, "without a two-thirds vote of each house of the legislative assembly," the purpose being to allow you to make these appropriations if two-thirds of each assembly approve.

Mr. Leuthold.

**DELEGATE LEUTHOLD:** Mr. President, may we have a roll call vote on that vote?

**CHAIRMAN GRAYBILL:** We will but I don't know if we're ready to vote yet.

Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. I want to speak a few words upon this offering of Delegate Drum. First of all, I don't think public lands are appropriation. There's no reason why the lands cannot be leased. They are leased all the time. Secondly, we have now a proposition where the land could be leased or handled some way by a two-thirds vote of the Legislature. In other words, we have the constitutional provision and then we let the Legislature legislate upon a constitutional provision, when all of us are well aware that the only people who are empowered to legislate is the Supreme Court. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Drum, do you want to close?

**DELEGATE DRUM:** (Inaudible)...on my amendment, and I would like to say to Mr. Romney, as you get into the finance section or the proposal from the Finance Committee, you will see that some of this permissiveness is allowed as a result of the unanimous vote of our committee. However, to write something in stone which looks like it may be such a good opportunity for the State of Montana to achieve some tax relief and more usage of our lands, I hope that you would give a little more latitude to your wisdom. The fact that the state owns the land does not make it overly attractive to some folks who may wish to invest. There are federal funds; there are foundation funds; and if money can be matched by the state to develop some of these projects, it could make it much more attractive to the development program. Thank you. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Drum's amendment to subsection 6 of Section 11. The amendment would add "that no appropriation could be made for these purposes not under the control of the state without a two-thirds vote of each house of the legislative assembly." We're going to have a roll call vote. So many as are in favor please vote Aye on the voting machine. So many as are opposed please vote No. Has every delegate voted? Does any delegate wish to change his vote? Please take the roll call.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Nay |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Nay |
| Cate | Absent |
| Champoux | Nay |
| Choate | Aye |
| Conover | Nay |
| Cross | Nay |
| Dahood | Aye |
| Davis | Nay |
| Delaney | Nay |

| | |
|---|---|
| Driscoll | Absent |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Nay |
| Foster | Aye |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Absent |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Aye |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Absent |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Absent |

**CLERK HANSON:** Mr. President, 26 delegates voting Aye, 66 voting No.

**CHAIRMAN GRAYBILL:** 66 delegates having voted No, the amendment fails. We're now on subsection 6 of Section 11 which reads as the majority report shows on page 6. Very well. Members of the committee, you have before you subsection 6 of Section 11 on the motion of Mr. Nutting that when this committee does arise and report, this same shall have been adopted. We'll use the voting machines, a roll call having been called for. All those in favor of the majority report subsection 6, vote Aye—and opposed vote No. Use the voting machines. There was a roll call called for. The roll call was called for by Mr. Leuthold. (Inaudible) Have all the delegates voted? Anybody wish to change their vote? Very well, take the roll call.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Absent |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |

| | |
|---|---|
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Aye |
| Cross | Aye |
| Dahood | Nay |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Absent |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Aye |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Nay |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Nay |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Absent |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Absent |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Absent |

**CLERK HANSON:** Mr. Chairman, 76 delegates voting Aye, 18 voting No.

**CHAIRMAN GRAYBILL:** 76 delegates having voted Aye and 18 voting No, subsection 6 is approved. We will recess at this time, but I wanted to point out that when we start this afternoon, we will start on 11(2), which was passed until 1:00 p.m. Section 11, subsection 2.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move the Committee of the Whole stand in recess until 1:00 p.m. this day.

**CHAIRMAN GRAYBILL:** (Inaudible) that the Committee of the Whole stand in recess until 1:00 p.m. All in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** So ordered.

(Convention recessed at 12:00 noon—reconvened at 1:05 p.m.)

**CHAIRMAN GRAYBILL:** The Convention will be in session. Very well, the committee will be in order. We will proceed with subsection 2 of Section 11. Will the clerk please read subsection 2, as amended?

**CLERK HANSON:** "Subsection 2 On any vote which advances or changes the status or substance of a bill, resolution, or rule the vote of each member must be recorded and entered upon the journal."

**CHAIRMAN GRAYBILL:** Now, to that subsection with the amendment, which was Mr. Aronow's amendment to say, "and entered upon the journal"—to that subsection we have Mr. Harper's amendment "that on the request of any member", and we have Mr. Aasheim's amendment "on the request of any five members." Now, Mr. Aasheim isn't here; Mr. Harper isn't here.

**CLERK HANSON:** Mr. Harper is here.

**CHAIRMAN GRAYBILL:** Harper is here, yes. Mr. Aasheim isn't here. I think the Chair will rule that the amendment—you correct me if I'm wrong, Mr. Murray—the Chair is going to rule that the amendment of Mr. Aasheim, which was adopted, pertains, but that the other two substitute, or the other two amendments which were not considered are wiped out, and I will call on Mr. Harper to remake his amendment, if he cares to.
Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, did you say Mr. Aronow's or Mr. Aasheim's had been adopted?

**CHAIRMAN GRAYBILL:** Mr. Aasheim's has not been—no, Mr. Aronow's amendment has been adopted. It added the words, "and entered on the journal." and Mr. Aasheim's and your amendments I am ruling have been wiped out.

**DELEGATE HARPER:** Mr. Aasheim and I and several members of the Legislative Committee met over lunch time and if the Chair will allow, Mr. Loendorf has suggested wording for a new amendment and I would like to withdraw mine in favor of it.

**CHAIRMAN GRAYBILL:** All right, your amendment is withdrawn. Mr. Aasheim, I wiped your amendment out but would you like to withdraw it?

**DELEGATE AASHEIM:** (Inaudible)

**CHAIRMAN GRAYBILL:** All right, his is withdrawn. Both of those amendments may be shown in the journal as withdrawn, and I'll call on Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Are there any motions pending?

**CHAIRMAN GRAYBILL:** There are no motions pending.

**DELEGATE LOENDORF:** Mr. Chairman, I would move at this time that Section 11, subsection 2, page 23, lines 9 through 14 of the Legislative Committee proposal be amended by deleting the entire section and substituting in lieu thereof the following words and punctuation: "The vote of each member of the legislature and its committees on any substantive question shall be recorded and made public." Mr. Chairman, shall I deliver a copy of this to the rostrum?

**CHAIRMAN GRAYBILL:** Please. Page, the man in the—did you give it—oh, all right, never mind—thank you. All right, Mr. Loendorf's amendment to subsection 2 of 11 is to strike all the language in the majority report and place therein the language: "The vote of each member of the legislature and its committees on any substantive question shall be recorded and made public."
Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman, may I speak on the motion?

**CHAIRMAN GRAYBILL:** Yes, sir.

**DELEGATE LOENDORF:** Mr. Chairman, this motion is offered in an attempt to maybe alleviate some of the problems which arose regarding the present Section 11, subsection 2. It does not require that the recorded votes be entered in the journal. It leaves that entirely to the discretion of the Legislature. It does require that they be recorded in some manner and made public, and it is limited to substantive questions—does not include procedural questions. And I think we are all aware that substantive questions are those that refer to subject matter only, not the procedure as to how something's accomplished. The reason I support such a proposal are these. Under the present system about 40 percent of the votes, and that's a rough estimate, are recorded in the Legislature. A citizen who has an interest in a bill has no way of knowing how his particular legislator voted on that bill. And for people who have observed the Legislature know that many legislators vote differently on second reading than they do when the vote is being recorded. And it makes me wonder when a legislator votes one way when his vote is not recorded and another way when his vote is recorded and the people back home know how he's voting, just who he is representing. If he chooses to vote against their wishes, that's fine, but I think they should know that so they can take any action they might desire at a subsequent election. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there discussion?

(No response)

**CHAIRMAN GRAYBILL:** If there is no discussion, Mr. Loendorf, I think I will ask that you change your motion to be that when the committee does arise and report, after having under consideration your proposed subsection, that the same be adopted. Is that all right?

**DELEGATE LOENDORF:** I so move, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, members of the committee, you have before you a new proposal on subsection 2 of Section 11 by Mr. Loendorf, and his motion that when this committee does arise and report after having it under consideration that the same shall be adopted. So many as shall be in favor of the motion say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it and it is adopted. Mr. Clerk, will you read subsection 3?

**CLERK HANSON:** "Subsection 3: A bill shall become law upon a majority vote of the members present." Mr. Chairman, subsection 3.

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 11, subsection 3, that it recommend the same do pass. By changing Section 2, we have presented somewhat of a problem in Section 3, and so as a substitute motion, I would like to amend Section 3 to read as follows, deleting the entire subsection 3 and, in essence, we are putting back in the same language as is contained in our present Constitution, and it would read: "No bill shall become law except by a vote of the majority of all members present, and on final passage the vote to be taken by the Ayes and the Noes and the names entered on the journal." I think this means that the final vote would have to be entered in the journal and the other votes would be taken care of under Mr. Loendorf's amendment.

**CHAIRMAN GRAYBILL:** Mr. Nutting, can you tell me the section of the Constitution you're quoting from?

**DELEGATE NUTTING:** Section 24.

**CHAIRMAN GRAYBILL:** Of Article V?

**DELEGATE NUTTING:** Of Article V, yes, sir.

**CHAIRMAN GRAYBILL:** All right, Mr. Nutting's proposal is the substitute motion of the committee is to delete Section 11, subsection 3, in its entirety and insert in lieu thereof the following: "No bill shall become law except by a vote of the majority of the members present, and on final passage the vote be taken by Ayes and Noes and the names entered on the journal." Is there discussion?

Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. Chairman, I rise in opposition to this section for the reason that at this time we do not know whether our next Legislature will be unicameral or bicameral. By this language, I think it would be possible for any bill to be passed with only 26 or 27 members of a unicameral legislative body and I don't consider that enough. This wording would say "a majority of those present and voting" and under unicameral, you only need a majority, which would be 51 to be a quorum, and then technically, a majority of 51 is only about 26 or so members and I do not consider that enough people under the unicameral system to pass a law.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, exactly—just to follow up—I'm not commenting on whether it's right or not, Mrs. Erdmann's suggestion—the same thing would be true in a bicameral with a Senate of 50 or with either house with the 50.

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman, I think it is necessary to put in "the members present" so that a vote could not be prevented by members merely staying away. That they must be present.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman, I'd like to add to that. I agree with Mr. Nutting. The provision, "members present", is absolutely necessary. If you allow people to stay away and give them credit for a No vote—in other words, if you required a majority of all the members, you require 51 members to approve something. Assuming only 51 members are there, 2 vote against it. You have a vote of 49 in favor, 2 against, yet the measure fails.

**CHAIRMAN GRAYBILL:** The Chair would like to call to the attention of the body that the amendment proposed—the language out of the old Constitution—does say "a majority of all members present". Is there further discussion?

Mr. Champoux.

**DELEGATE CHAMPOUX:** For the sake of expediency, Mr. President, perhaps it would be wise—and by this statement I don't mean to indicate my support either way at this point for either type, a unicameral or a bicameral—that we pose our proposals in the bicameral sense and then if there is some problem, then leave it to Style and Drafting to change it if we go to unicameral later on. What I'm thinking about is, what are we going to go to in terms of the vote if we go both ways?

**CHAIRMAN GRAYBILL:** Well, I don't know if you're posing a question for the Chair, but the language proposed and on which you are now voting doesn't apply to either bicameral or unicameral. It simply says, and I'll read it again, "No bill shall become law except by a vote of the majority of all members present, and on final passage the vote be taken by Ayes and Noes and the names entered on the journal." Now, if that was in the old Constitution, it must work for a bicameral system. Is there other discussion?

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, we already have a precedent on this subject from Proposal Number 1 where I inquired specifically of Mr. Etchart whether it was his intention that the two-thirds or three-fourths, or whatever the number was, should apply to the total number of members in two houses, and this is something that Style and Drafting isn't going to get involved in with that precedent unless it's pretty closely spelled out, so we'd better be careful about it here now.

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman, this proposal—we are now working on the unicameral section and this proposal is presented as a portion of the unicameral. I presume that it will be under discussion again, whether it will be each house or whether it would be of total members, but right now we are discussing unicameral so it is presented with that idea in mind.

**CHAIRMAN GRAYBILL:** Members of the committee, you now have before you on the motion of Mr. Nutting that when this subsection 3 of Section 11—and his recommendation that when this committee does arise and report, after having it under consideration, that we recommend that it be adopted. Now, so many as are in favor of adopting subsection 3 of Section 11 as proposed in the amendment made by Mr. Nutting, namely that it be the same as in Section 24, Article V, of the present Constitution, please indicate so by saying Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as are opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered. Now members of the body, before we proceed, the Chair would like to, with your indulgence, make a short statement. We have now, by our actions since noon, passed two more subsections, making the total six subsections that we've passed today. I would like to suggest to you that it is probably becoming obvious to all of us now that the Legislature may not be nearly as dilatory as some of us sometimes think, and that maybe they do a pretty good job to get out of here in 60 or 65 days. I think that we have been accomplishing much more this morning, but I would still like to call to your attention that so far today, in a half a day, we have adopted 6 subsections of 1 section; that the legislative proposal has 16 sections; and that we have a long way to go. We are technically behind the schedule we have set for ourselves. I would like to pleasantly suggest to you that, in listening to the discussion, I think it is important that we still attempt, as individual members, to keep our discussion germane. And perhaps more importantly, I think we should look once again to the basic committee structure under which we're operating. When a committee brings in a report, please consider carefully before amending the committee's report or changing the committee's report. That's the purpose of the committee system. You are certainly free to change it, but please do so after thought. The point is that that particular committee has spent at least as much time on their issue as you have spent on yours, and I do feel that at times we have made amendments from the floor with a flick of a pen that could well have been avoided. Now, on the other hand, if you see something in a committee report that you really are concerned about, and if you see it ahead of time, you might take it up with the committee, or a member of the committee separately and find out the purpose for that, rather than debating it with six or eight of your colleagues for quite a while before we find out the purpose. So, with that slight suggestion and the admonition that we've only covered 6 subsections this afternoon—or today—the Chair is going to ask the clerk to read Section 13—no, 12, I beg your pardon, Section 12.

**CLERK HANSON:** "Section 12. Local and Special Legislation: The legislature may not pass a special or local act when a general act is, or can be made, applicable."

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you Section 12 of the Legislative Committee proposal.

Mr. Johnson.

**DELEGATE JOHNSON:** Mr. President, I propose that when this committee does rise to report they will consider Section 12 and move for its adoption. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Johnson.

**DELEGATE JOHNSON:** This proposed section is replacement for Article V of the Constitution of Montana. It's a very—I mean, Article V, Section 26, excuse me. Section 26 is probably the longest section in our Constitution and I'm not going to read it. It's on page 10 of the yellow bound copy of our Constitution. I will say it has a long list of prohibitions. It's simply a restatement of the—our Section 12 that we're under consideration—it's simply a statement of the last sentence of Section 26. Our committee believes that this statement adequately covers the prohibitions set at length in the original section. The committee wishes to remove the long, long list of prohibitions and partly because all these prohibitions are becoming obsolete. You'll find in the U.S. Constitution, Sections 8, 9 and 10 of Article I, probably in one way or another covers all these prohibitions. In addition, this prohibition against special and local laws is well established in Montana and the United States jurisprudence. As the cowboys down in Powder River say, "inclusio unias, exlusio ulterius." (Laughter) I've been asked for a translation. It's a good thing I have it. "inclusion of the one means the exclusion of the other." Mr. President, I move for the adoption of this resolution.

**CHAIRMAN GRAYBILL:** Is there debate on Section 12?

(No response)

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you on the motion of Mr. Johnson that when this committee does arise and report, after having under consideration Section 12 of the Legislative Article, it recommend the same be adopted. So many as are in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Will the clerk please read Section 13, subsection 1?

**CLERK HANSON:** "Section 13, Veto: (1) Every bill passed by the legislature shall be presented to the governor for his approval and shall become law if he neither approves nor vetoes it within 5 days while the legislature is in session or within 25 days after the legislature has adjourned." Mr. Chairman, Section 13, subsection 1.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, instead of making the usual motion for adoption, I will make another motion, but before I do that, it is necessary that I make a brief explanation. In the present Constitution the veto power is embodied in both the Legislative and the Executive sections. You find a very short section in Article V, Section 40, in the Legislative section, pertaining to the veto; whereas, it is covered in Article 12 of Section 7 at much greater length in the present Constitution. It so happens that both the Executive and the Legislative Committees considered that they were to handle this section and both of them have prepared provisions for it. However, because it was unwise to debate it twice, an understanding has been reached between the chairmen of the two committees to the effect that the Executive Committee has greater reliance upon the section—or the yes, the section—it has been decided that if it is satisfactory with the Convention membership, that we should pass this and go on to the—and take it up when the Executive Article is being considered. However, there is one correction which should be made in this section. In the unicameral section it provides in subsection 5, "The governor shall not have the veto power over resolutions, initiative, referendum, or constitutional amendments, and appropriations for the legislature." Inadvertently, the last phrase, quote, and appropriations for the legislature unquote, was omitted from the language in the bicameral section which you will find in page 48. That phrase should be added after the word, "amendments", period, on line 22. I could go along and describe the differences between the Executive and Legislative sections as they have been prepared but I doubt that it would be a part of wisdom if the Convention decides to pass this over to the Executive Committee. So I move, in order to determine whether I should proceed or whether it will be changed, I move that the veto sections of the bicameral and unicameral Section V, Article XIII, be transferred to the Executive Committee's proposal.

**CHAIRMAN GRAYBILL:** Very well, Mr. Romney has moved that Section 13 of the Legislative Article pertaining to the veto be passed so that the matter can be taken up as part of the Executive Committee proposal. Any discussion?

(No response)

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mr. Romney's motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it and it's so ordered. Will the clerk now read Section 14(1)?

**CLERK SMITH:** "The governor, executive officers, heads of state departments, judicial officers and such other officers as may be made subject to impeachment by law may be removed from office upon conviction of impeachment. Other proceedings for removal from public office for cause may be provided by law."

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you Section 14(1). Mrs. Bates.

**DELEGATE BATES:** Mr. President, I move that when this committee does rise and report they have taken under consideration Section 14, that they will—I recommend do pass. This proposal is almost identical to the original proposal as far as impeachment is concerned. In reading through the comments, this proposed section of Article V, Sections 16, 17 and 18 in an amended form. The proposed section allows the Legislature to establish impeachment procedures. The committee believes that the same body which brings the charges shall not hear the case. For this reason, the proposed section allows the Legislature to bring the charges and provides that it should select some other body to serve as the tribunal. The proposed section also requires a two-thirds vote to bring the charges and a two-thirds vote to convict. This two-thirds vote for charges is different than the original in the present Constitution. There it required a majority vote. The proposed article also allows the Legislature to establish other procedures for the removal of officers from public office for cause. In the present Constitution the Senate sits as the tribunal. In this case it would be up to the Legislature to provide for a tribunal body. And otherwise, it's identical.

**CHAIRMAN GRAYBILL:** Is there discussion on subsection 1 of Section 14?

(No response)

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you, on the motion of Mrs. Bates, that when this committee does arise and report, after having under consideration subsection 1 of Section 14, that it recommend the same be adopted. So many as are in favor of that motion, please say Aye

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Will the clerk please read subsection 2 of Section 14?

**CLERK SMITH:** "The legislature shall provide for the manner, procedure and causes for removal by impeachment and shall provide for a tribunal."

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** I went on to explain the whole article before and this is the difference here is where, from the old law—

**CHAIRMAN GRAYBILL:** Is there discussion of subsection 2?
Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I am concerned by an apparent difference between the comments and the actual language of subsection 2. The comment says that the Legislature shall bring the charges and provides it should select some other body to serve as the tribunal. Section 2 provides that the Legislature shall provide for a tribunal but does not say that the same body which brings the charges can not also hear them. So, I'm wondering if some member of the committee would comment on that. The way I read 2, it doesn't exclude the same body that brings the charges from also hearing them, from also trying them, which I believe would be a violation of our separation of powers.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I suppose I didn't clarify that. This is true. It is anticipated that it will be another body, that they will appoint another body.

**CHAIRMAN GRAYBILL:** Yes, I think his question is, if that's the case, where does it say that in the language? Is that right, Mr. McNeil?

**DELEGATE McNEIL:** (No audible response)

**DELEGATE BATES:** (Inaudible)...excuse me—the Legislature shall provide for the manner, procedure and causes and provide for the tribunal. They will set it up. It would be by law.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, but as I read Section 2, the Legislature could provide that itself would serve as the tribunal and does not require, as your comments suggest, that another body serve as a tribunal.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Hold the mike down, Mr. Cate. Thank you.

**DELEGATE CATE:** Mr. Chairman, Mr. McNeil, the present method of impeachment in our present Constitution provides that the House will bring the impeachment charges and the Senate will act as the judge. And we tried to write this article so it would fit both bicameral and unicameral proposal, and we felt that simply leaving it to the Legislature would permit, for instance, the unicameral system to appoint perhaps the Supreme Court to hear the impeachment charges, and it would still leave in a bicameral system the power of the Legislature to put the Senate in as the tribunal. And that's the way it's written the way it is so it would fit both the bicameral and unicameral provision, and leave it up to the Legislature to determine who the tribunal would be.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman, I believe if you read the comments like Mr. McNeil has done, that these comments have practically the force of law when it comes to interpreting what we have done in the Constitution. So any court would read these comments and read the intent of our section on impeachment.

**CHAIRMAN GRAYBILL:** Is there further discussion?
Mr. McNeil.

**DELEGATE McNEIL:** I move to amend subsection 2, Section 14, by adding the following language: "different from the tribunal bringing the charges."

**CHAIRMAN GRAYBILL:** Will you send that up to the Chair? I take it, if I wrote it down correctly here, that it is the sense of Mr. McNeil's amendment to add to the end of subsection 2 a clause; so it would read: "and shall provide for a tribunal comma, different from the tribunal bringing the charges". Is there discussion of Mr. McNeil's proposed amendment?

Mr. Lynch—Joyce, excuse me.

**DELEGATE JOYCE:** Neil Lynch wouldn't like that, Mr. President. Mr. President, I move as a substitute motion that the amendment not—or I speak—I rise in opposition to the proposed amendment on this ground and suggest that perhaps, even though the comments may not be part of the law, that we vote on the section on the basis as though the comments were part of the law, and leave it to Style and Drafting to come up with the language that will accomplish what the comments say the committee wanted to do. Therefore, [I] oppose the amendment on that ground only.

**CHAIRMAN GRAYBILL:** Very well, I take it the amendment is on Mr. McNeil's amendment. Mr. McNeil would amend subsection 2 of Section 14 so it reads as follows: "The legislature shall provide for the manner, procedure and causes for removal by impeachment and shall provide for a tribunal—" that's already in there. Then he would add, "different from the tribunal bringing the charges."

Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I think that Mr. McNeil is hunting for the right target, but I don't believe he's found it. It seems to me that it's inadequate to have the House that brings the charges appoint the tribunal. I think that somewhere it should be spelled out. Under the present Constitution, of course, the Senate—it is spelled out and the Senate hears the case and if we have a bicameral Legislature, that could be followed with a bicameral situation. But if it is going to be a unicameral house, certainly the accusing house should neither be the judge, nor should it appoint the judge. It should be spelled out in this article right now. I am not prepared to say who should be handling the impeachment proceedings—perhaps the Supreme Court, perhaps a group of judges, or somebody that we would name now, but certainly not somebody that the accuser would appoint.

**CHAIRMAN GRAYBILL:** All right, the question still arises on Mr. McNeil's amendment which would say—he would add to this clause, to this subsection, a clause which would say that "the legislature shall provide for a tribunal different from the tribunal bringing the charges." So many as shall be in favor of Mr. McNeil's amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and so ordered. Is there further discussion on the language of the committee?

(No response)

**CHAIRMAN GRAYBILL:** Members of the committee, you now have before you on the motion of Mrs. Bates that when the committee arises and reports, after having under consideration Section 14, subsection 2, that the same shall be adopted. All those in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it and it's adopted. All right, will the clerk please read subsection 3?

**CLERK SMITH:** "Subsection 3: Impeachment can be brought only by two-thirds vote of the senate and no conviction for impeachment shall be made except by a vote of two-thirds or more of the members of the tribunal hearing the charges."

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I move that when this committee does rise and report, after having under consideration subsection 3 of Section 4, that I recommend do pass and this—Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** This is where the two-thirds vote is required of the Senate, it says "for conviction", and this is where it differs from the original passage.

**CHAIRMAN GRAYBILL:** I take it to be the sense of the body that Style and Drafting can deal with the word "senate", if it becomes necessary. Is there other discussion of the subsection?

(No response)

**CHAIRMAN GRAYBILL:** If not, members of the committee, you have before you on the motion of Mrs. Bates that when this committee does arise and report, after having under consideration subsection 3 of Section 14 of the Legislative Article, that the same be adopted. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.

**DELEGATES:** (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it and it's adopted. Will the clerk read subsection 4?

**CLERK SMITH:** "Subsection 4: Such conviction shall only extend to removal from office and disqualification to hold and enjoy any office under the state, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law." Mr. Chairman, subsection 4.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I move that when this committee does rise and report, after having under consideration subsection 4 of Section 14, they do pass.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, I think we have a problem here, something I think our committee overlooked. When we drafted this article, we were proposing to call the unicameral body a "senate" and it was supposed to have been written to apply to both the bicameral and unicameral system but, of course, vote of the Senate would limit it to a bicameral system, so I would move that Section 3 be amended to provide on line 16, "vote of the impeaching body, or the body"—I'll sit down and write this down (Inaudible).

**CHAIRMAN GRAYBILL:** Do I take it you relinquish the floor?

Mr. Davis.

**DELEGATE DAVIS:** Mr. President. Mrs. Bates, would you yield to a question, please?

**DELEGATE BATES:** Yes, Mr. Davis.

**DELEGATE DAVIS:** I am not certain of the language in Section 4 where you provide for the removal from office, any disqualification to hold or enjoy any office under the state. I don't know how far that would be in conflict with the proposed article that will be in the Bill of Rights, that after you have served your sentence that you are then reinstated to all your rights; and in the Election and Suffrage matter we passed, unless you are under sentence for a felony you're able to hold office. So, you are running head-on into an article we have already passed, perhaps. Would you please give us the benefit of your committee's thinking?

**DELEGATE BATES:** Floyd, you know, many things happened after this was written and I'll have to turn this over to some of the attorneys here. Somebody else want to take this?

**CHAIRMAN GRAYBILL:** Mr. Loendorf stood up.

**DELEGATE LOENDORF:** Mr. Chairman, I'll take a crack at it. Of course, this article was drafted at a time when we didn't know what would be in the General Government Article, but it seems to me there's really no conflict. Since both provisions are in the Constitution they must be interpreted together, and here we're dealing not necessarily with a crime, but with removal or disqualification to hold an office; while as I recall in the General Government provision, we're providing that conviction of a crime is an automatic disqualification to hold office during the term the man is under state supervision.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman, would Mr. Loendorf yield?

**CHAIRMAN GRAYBILL:** Mr. Loendorf?

**DELEGATE LOENDORF:** I yield.

**DELEGATE ARONOW:** (Inaudible)...the proposed article says, "and disqualification to hold and enjoy any office under the state." Does that mean forever? Or until what time does that disqualification cease?

**DELEGATE LOENDORF:** Okay. Mr. Aronow, we have to read the entire provision, or Section 14, as a unit. And subsection 2, I think, provides that the Legislature shall provide for the manner, procedure and causes for removal by impeachment. And I would think the Legislature would have discretion in this area. In this article we're not providing any particular reason for impeachment. We're leaving that open.

**DELEGATE ARONOW:** But the question is, Mr. Loendorf, how long does that disqualification from holding office continue? Is that forever? For the length of the man's lifetime? Or woman's?

**DELEGATE LOENDORF:** That will depend on whatever the statute implementing this provision provides.

**DELEGATE ARONOW:** It doesn't say as provided by law.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** I would move that subsection 4 be amended by deleting the language, "and disqualification to hold and enjoy any office under the state". Mr. President, it would seem that...

**CHAIRMAN GRAYBILL:** Mr. Davis, I trust you'll write that up and send it up here, and go ahead and discuss it.

**DELEGATE DAVIS:** It would seem that you might have many more rights in this state if you were a convicted felon than upon the termination of your sentence than if you were impeached for any malfeasance or nonfeasance in office. And by deleting this I think you do, then, leave it to the statutes to implement it without making a permanent disqualification which will conflict with your other sections of our Constitution and won't hold up anyway.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** I rise in opposition to the amendment for it doesn't seem to me it follows necessarily that we are in conflict. It's simply if a man is impeached, why, then he can't hold any public office from then on out. That's what our current Constitution, as I understand it, reads. I would think that anybody who actually gets impeached is not apt to ever get elected to any office and maybe that's the way it ought to be.

**CHAIRMAN GRAYBILL:** Is there further discussion? Mr. Cate, do you want us to wait a minute? Are you writing an amendment?

**DELEGATE CATE:** I'll pass.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I believe the problem could be solved if I could propose an amendment to subsection 3 to delete the word "senate", in line 16 and substitute therefor the two words, quote, impeaching body end quote; and then in line 18, insert the word "different", prior to "tribunal", and if such a motion is not out of order, I will so move.

**CHAIRMAN GRAYBILL:** Well, it is out of order because we are on subsection 4 and we are dealing with Mr. Davis' amendment which was to drop the phrase "and disqualified—disqualification to hold and enjoy any office under the state." I think the only way we can do what you say is to reach it on reconsideration at some later time, Mr. McNeil. Is there further discussion?

(No response)

**CHAIRMAN GRAYBILL:** If not, the issue is on Mr. Davis' amendment which would make subsection 4 read as follows: "Such conviction shall only extend to removal from office"—then he deletes a phrase—"but the party, whether convicted or acquitted shall also be liable to prosecution according to law." He has deleted the phrase "and disqualification to hold and enjoy any office under the state." All those in favor of Mr. Davis' amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it unless you want a division.

(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it and the motion is adopted. The question now is on subsection 4, as amended. Is there further discussion?

(No response)

**CHAIRMAN GRAYBILL:** If not, members of the committee, you have before you on the motion of Mrs. Bates that when this committee does arise and report, after having under consideration subsection 4, as amended, of Section 14 that the same be adopted. All in favor, please say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**CHAIRMAN GRAYBILL:** Subsection 4 is adopted as amended. (Inaudible)...will the clerk read Section 15 of the Legislative Article? Just a moment. Please read Section 15, sub. 1, of the article.

**CLERK SMITH:** "Section 15, subsection 1. For the purpose of electing members of the legislature, the state shall be divided into as many districts as there shall be members of the legislature. Each legislative district shall consist of compact and contiguous territory and be so nearly equal in population as it is practicable."

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** (No audible response)

**CHAIRMAN GRAYBILL:** The Chair will ask Mr. Aasheim, the Chairman of the committee, to explain Section 15. There is an amendment proposed to Section 15 which goes to all of the section. So Mr. Aasheim, perhaps you should explain all of the section first and then we'll come back and take it section by section.

**DELEGATE AASHEIM:** Mr. Chairman, Mr. Skari will take care of this one.

**CHAIRMAN GRAYBILL:** All right, Mr. Skari.

**DELEGATE SKARI:** Mr. President, I move that when this committee does arise and report, after having had under consideration Section 15, subsection 1, of the Legislative proposal, I recommend that the same do pass. Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Skari.

**DELEGATE SKARI:** The Legislative Committee recommends single member legislative districts for both the bicameral and the unicameral Legislature. Under a bicameral system we recommend the two representative districts for one senatorial district. Our reasoning here is to justify a bicameral legislative structure. Senators and representatives should have different constituencies. In other words, the senator should present the broader view. Under the unicameral article, we recommend single member districts completely. Our rationale for single member districts is somewhat as follows.

**CHAIRMAN GRAYBILL:** Mr. Skari, I wonder if you'd step forward and use a mike in the row ahead of you. Mr. Rebal's mike's available there.

**DELEGATE SKARI:** The committee's reasoning for single member districts is as follows: it fosters personal identification between the legislator and his constituency. I think we're all aware of the problems inherent in such large multimember districts, such as Yellowstone and Cascade Counties, the long ballots, especially the primary ballots. It becomes more like an exercise in throwing darts, I think, for the voters—looking at it from the point of view of the voters. In the rural areas we have our problems also. Multimember districts lead to serious geographical representation problems. The multimember districts comprise many large counties, and this involves thousands and thousands of square miles. Also, there is no guarantee that all the representation will not be from one part of the district. Campaign expenses would be reduced. We believe that voters would be much more aware, and it would open the Legislature to those who are now barred by a lack of campaign funds. People could campaign on a person-to-person basis rather than through expensive—than an expensive campaign through the media. We feel that the person-to-person campaign is the most effective. It is the least deceptive. Also, candidates would be somewhat less dependent on party support. We feel that, also, the constituents would follow the legislative performance and voting record of one legislator far better than that of many legislators. They know exactly to whom they should address a complaint or who they should contact. It greatly reduces the burden on the voter. We feel that the most accurate method of representation is by single member districts. Minorities are not submerged and their voice drowned out. Block voting is somewhat discouraged by this method. You vote for a candidate rather than strictly upon party lines. The committee realizes that single member districting requires the establishment of more boundary lines, but we feel that the great improvement in democratic representation is certainly worth this. In subsection 2 we will have some recommendations on how this should be done. The committee also feels that single member districts are the most desirable method of representation and that they should be constitutionally provided for. Legislators who have won reelection from multimember districts are probably not inclined to vote for smaller districts. For this reason, the committee recommends writing single member districting right into the new Constitution. Multimember districts may be declared unconstitutional, also. The federal court case in Alabama is something that we must pay some attention to. Multimember districts must therefore be considered to be on rather shaky legal ground in the future. In closing, I'd like to point out that Montana has had, from territorial days until 1965, has elected most of its Legislature, both the House and the Senate, on a single member basis. For these reasons, I move that we adopt Section 15, subsection 1.

**CHAIRMAN GRAYBILL:** Very well. So that everyone will understand what we are doing here, it seems to me that subsection 1 deals with single member districts as a principle. The amendment that's coming in deals with the rest of the subsections so we should debate and discuss and pass or not pass subsection 1 now. Is there discussion on subsection 1?

(No response)

**CHAIRMAN GRAYBILL:** Very well, members of the committee, you have before you, on the recommendation of Mr. Skari, that when this committee does arise, after having under consideration Section 15, subsection 1, that it recommend the same be adopted. All in favor, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it and it's so adopted. Now, will the clerk please read—will the clerk please read subsection 2?

**CLERK SMITH:** "Subsection 2: Immediately upon enactment of this section and in the session preceding each census made by the authority of the United States, a committee of four citizens, none of whom may be public officials, shall be designated to draft a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each designate two commissioners. The four commissioners, within 20 days after their designation, shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall appoint the chairman." Mr. Chairman, subsection 2.

**CHAIRMAN GRAYBILL:** Mr. Skari.

**DELEGATE SKARI:** Am I on? Mr. President, I move that when this committee does arise and report, after having had under consideration Section 15, subsection 2, of the Legislative proposal, I recommend that the same do pass. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Skari

**DELEGATE SKARI:** This is the majority proposal on the establishment of a method of reapportionment. We have had considerable fun with the reapportionment article, and we spent considerable time on it. We realize that reapportionment needs to take place about every 10 years because the effects of reapportionment can greatly affect local and state political structure for a decade. Mr. President, because these sections are somewhat intermixed here—they are part of a plan—and I beg your indulgence here if I possibly go over into the other sections a bit.

**CHAIRMAN GRAYBILL:** Mr. Skari, do you wish the clerk to read 2, 3, 4, 5 and 6 now?

**DELEGATE SKARI:** Yes.

**CHAIRMAN GRAYBILL:** Very well, the clerk please read 3, 4, 5 and 6.

**CLERK SMITH:** "Subsection 3: No later than 90 days after appointment of the chairman, or following the official reporting of each federal census, whichever is later in time, the commission shall file a plan with the secretary of state." Subsection 3. "Subsection 4: Any person aggrieved by the preliminary plan shall have 30 days to file exceptions with the commission in which case the commission shall have 30 days after the date the exceptions were filed to prepare and file a revised plan. If not exceptions are filed within 30 days, or if filed and acted upon, the commission's plan shall be final and have the force of law." Subsection 4. "Subsection 5: Any aggrieved person may file an appeal from the plan directly to the supreme court within 30 days after filing. If the appellant establishes that the final plan is contrary to law, the supreme court shall issue an order remanding the plan to the commission and directing the commission to reapportion and redistrict in a manner not inconsistent with such order." Subsection 5. "Subsection 6: When the supreme court has finally decided an appeal taken, the reapportionment plan shall have the force of law and districts shall be used thereafter in elections to the legislature until the next reapportionment is required." Mr. Chairman, subsection 6

**CHAIRMAN GRAYBILL:** Now, Mr. Skari, why don't you explain all of the subsections, 2, 3, 4, 5 and 6?

**DELEGATE SKARI:** Thank you, Mr. President. As I mentioned, the effects of reapportionment can greatly affect local and political structure for at least a decade. We feel that some consideration has to be paid to this area and how this is to be accomplished. The majority report recommends the establishment of a commission on reapportionment and redistricting which would initiate a reapportionment and redistricting plan which would essentially—which would be appointed by the legislative leadership but would be somewhat independent and autonomous. It would, in effect, bypass the Legislature from this point on. It is our aim to provide for the creation of a commission reasonably free of legislative pressure. To do this, we recommend that the Convention constitutionally delegate this power to this commission. Our reason for this is as follows: we are not infatuated with the creation of special commissions to accomplish what some people consider to be a legislative function. We question, however, whether this is entirely a legislative function. There is a definite conflict of interest here. I would point out that England, under its parliamentary system, uses a permanent boundary commission, and the only member of the Parliament on this is the somewhat depolitized speaker of the House of Commons. The redistricting and reapportioning in the sixties did place a great strain under the methods we had worked under before. The Montana experience was that in 1965 the Legislature was unable to reapportion. About a dozen bills were introduced, and not a single one was accepted. Consequently, it fell to the federal District Court to reapportion the state. In 1971 the Legislature drew up one plan which was invalid because of a 37 percent variance. After working through the regular session, one special session, the Legislature finally came up with the present plan in the second special session, which the court allowed to stand for the election of this Convention. Utah recently met in a special session soley for the purpose of reapportionment. Other states have had similar experiences in the past 15 years and among revisions in the past 15 years in new Constitutions, only two leave the traditional legislative reapportionment undisturbed. Reasons—there are several reasons why reapportionment is difficult for the Legislature. Each legislator tends to create his own district first. I think this is just a natural human trait. It's not meant as criticism. There is a great difficulty in being objective here, because one man's gerrymander can be other one's logical district. There is a certain pressure from legislators not on the committee. Legislators themselves do not particularly enjoy this job, either. Also, it takes a great deal of the Legislature's time. I would point out also that single member districts and residence requirements will greatly increase legislative difficulties in this area. Some of the features of the majority plan are as follows: there is a choice of four members by legislative leadership. The Chairman is chosen from this number and would be acceptable to them. We state that no public officials would be serving on this commission. Under this plan, the legislators and private citizens would have the same privilege of filing objections or exceptions to the commission. They could do this without expensive litigation. This could be done without going to court in a 30-day period. I would say that interest in redistricting should not be confined only to legislators, and I would suggest that we avoid a long period of wasted time. I think that experience has shown that reapportionment tends to fall ultimately to the backstop agency. In this case we are asking the commission to initiate and to carry it out completely. We suggest that this wastage of legislative time be avoided. Among states which have adopted specialized reapportioning agencies in recent years, the great majority require single member districts in both houses of the Legislature. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** In backup to the presentation, I know you were given considerable material here and we are going to have a minority report, but I want to explain again this program, as Mr. Skari has explained it so very thoroughly and very ably. You'll note that the committee—or, I want to explain to you the committee was unanimous in the matter of creating single member districts. The plan for reapportionment and districting was a little different matter. We did agree on one plan, but not in total. And there is basically two different ideas here, and this one is quite stringent in that it gives the commission pretty near autonomous power. Now, maybe you don't want that. We are amendable to any suggestion you might have, but if you'll note again what Mr. Skari told you, that this commission is created by the majority and minority floor leaders of the two houses, or they would select four. Or if there was one house, they would select four—the majority and minority floor leader—and they in turn would select a Chairman. If they couldn't the Supreme Court would select a Chairman. Then, this committee would present a plan and they could gerrymander whatever you please, but they would do it, and then any member of the Legislature could go to the commission and say, "We don't like this because you have left me out" or, "You have done something wrong over here." And we feel that the Legislature, the individuals, probably know as much about how this state should be apportioned as maybe a commission. So, they have this right to go to the commission and say, "We don't like this," but all they can do is recommend. So this commission is pretty powerful. They can say, "We're going to adopt this no matter what you say." Then, of course, in 30 days, if the Legislature doesn't make any recommendation, any aggrieved person—a citizen—can bring action in the court to say, "This is not proper. Now, that's all I wanted to say—to explain this majority proposal.

**CHAIRMAN GRAYBILL:** The Chair is interested in recognizing whomever wants to handle the minority report before we debate this. Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Do you want to make that now, or do you want to hold that?

**DELEGATE NUTTING:** Mr. Chairman, I will mention—well, let's see—as a substitute motion, I move we adopt the minority report, and you have it on your desk. It says Plan 2 at the top. It's a single sheet. It has printed, written large letters, Plan 2. If you have it in front of you, the essential difference is not that we vary in the selection of the commission, not that we—the method that the commission is selected. In Plan 2, it merely assumes that the—where could you get a more representative body to represent you than the Legislature? So, what we do in Plan 2, we give the Legislature an opportunity to reapportion themselves. If the Legislature fails to do so, then a commission's plan would go into effect. That's essentially the only difference between the two plans. One leaves it with the commission with no recourse other than any citizen has a right to complain, but the commission's plan itself goes into effect if they do not choose to consider the recommendations. This proposal, it acts more as a backstop commission in that it's there. There are several different aspects of this which could be changed. The commission could possibly introduce their plan first, and the Legislature would have the right to offer a plan or not. But essentially the difference between the plan as you see it in the book and Plan 2 is that the Legislature does have an opportunity to examine the plan and rewrite it—write one of their own if they so choose, and the commission would be a backstop under Plan 2; under the plan as it is in the book they would write the reapportionment law.

**CHAIRMAN GRAYBILL:** Mr. Nutting, for the Chair's information, are you proposing Plan 2, which is Section 15, Districting and Apportionment, as a substitute for Sections 2, 3, 4, 5 and 6? or just Section 2?

**DELEGATE NUTTING:** Mr. Chairman, I guess my motion should be that Sections 2, 3 and 4 be stricken in their entirety and be replaced with Section 2 of the minority report, and that the other sections be renumbered consecutively. Under this condition, it still keeps the single member districts. It still gives the right of appeal to the Supreme Court and it—the commission still stays in effect in case the Supreme Court rules that it is unconstitutional—the state Supreme Court.

**CHAIRMAN GRAYBILL:** All right, now the Chair—Mr. Davis I am going to recognize you, but the Chair is going to have the clerk read Plan 2 so the delegates will have it read for them once. All right, I'll read it. "Section 15, Districting and Apportionment, subsection 2. In a session preceding each federal decennial census, a reapportionment commission shall be established. The majority and minority leaders of the legislature shall each designate two commissioners. The four commissioners, within 20 days after their designation, shall select a fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall appoint the chairman. The commission shall have the power to reapportion if the legislature fails to do so within 60 days of the first day of the first session after the census enumeration. The commission's apportionment plan shall be filed with the secretary of state. After enactment of the final plan, this commission shall be dissolved." Now, Mr. Davis.

**DELEGATE DAVIS:** Would Mr. Nutting yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Nutting?

**DELEGATE NUTTING:** Yes.

**DELEGATE DAVIS:** Under your plan, Mr. Nutting, there would not be a reapportionment until after the next federal census, is that correct?

**DELEGATE NUTTING:** Yes.

**DELEGATE DAVIS:** Would you yield to another question, Mr. Nutting?

**DELEGATE NUTTING:** Yes.

**DELEGATE DAVIS:** Is it the sense of your committee that under the majority proposal, we likewise would not have another apportionment until after the next federal census?

**DELEGATE NUTTING:** That is correct.

**DELEGATE DAVIS:** And just to be sure that I know what I'm voting on, in other words, then the size that we select here in this body or the size that the Legislature fixes themselves, will determine the size of the body and the districts. Is that correct?

**DELEGATE NUTTING:** I'm afraid I don't really follow you. If the commission—if the—whatever size is settled on in the Constitution would be—it would have to be reapportioned to that size, if that's what you—or if each 10 years as the census comes out, it would then be reapportioned under these rules. Am I answering your question?

**CHAIRMAN GRAYBILL:** Mr. Davis?

**DELEGATE DAVIS:** Yes, I believe so. In other words, the districts we now have are going to remain in effect until the next census, is really my question. I didn't ask it very well, but I think it's important we be clear on that.

**DELEGATE NUTTING:** Oh—of course, we will be changing from multimember districts to single member districts if we accept this proposal; therefore, there would have to be a reapportionment to get to the single member districts.

**CHAIRMAN GRAYBILL:** Now, so that everyone may understand this, if the Chair understands it, subsections 15-2, 3 and 4 of the majority report set forth a method whereby a commission is appointed, and in subsection 4 it says, the commission shall have 30 days after the date the exceptions were filed. In other words, the commission's filed its thing with the Secretary of State, then there shall be 30 days after that within which exceptions are filed, and then the commission shall consider the exceptions, and may file a revised plan. But the point is, on line 12, on page 8, if the commission does not revise it, then the commission plan—or in any event, whatever the commission does, the commission plan shall be final and have the force of law. Now, Plan 2 sets up a commission in a similar fashion which reports, I believe, to the Secretary of State, but in any event the commission will have the power to reapportion if the Legislature fails to do so within 60 days of the first day of the session following the census enumeration. So, the point is, that if the Legislature wants to reapportion, it can during the first 60 days of its first session after the census. And if it doesn't, then the commission's plan is automatic. The question is whether or not to let the commission reapportion or whether to let the commission reapportion only if the Legislature fails to reapportion. Now, Mr. Nutting and Mr. Skari, if I haven't fairly stated your positions, please correct me, but I think it's important that we get this straight. They both seem to be nodding yes. Is that right, Mr. Skari?

Mr. Skari.

**DELEGATE SKARI:** I want to point out there on line 7 of the majority proposal, we do allow for reapportionment following the adoption of this Constitution.

**CHAIRMAN GRAYBILL:** I see. All right, that's another further refinement. Now, is there debate or discussion on the reapportionment problem?

Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman, if I understand it correctly then, under the minority proposal there'd be a redistricting in 1980. And under the majority proposal there'd be a redistricting, assuming that the Constitution is approved, in 1973. Is that right?

**CHAIRMAN GRAYBILL:** Except that Mr. Nutting already explained that even under theirs, if you go to single member districts, there'll be one in 1973 to accomplish that. Isn't that right, Mr. Nutting?

**DELEGATE NUTTING:** Sorry, Mr. Chairman, I missed the...

**CHAIRMAN GRAYBILL:** In other words, even under the minority proposal, if we go to single member districts, there'll be a reapportionment to accomplish that in 1973?

**DELEGATE NUTTING:** That is correct.

**CHAIRMAN GRAYBILL:** So there's going to be one in 1973 under either plan, Mr. Arness.

Mr. Garlington.

**DELEGATE GARLINGTON:** In looking at Plan 2 here, I am puzzled by what would occur if the Legislature makes some kind of redistricting and reapportionment plan within 60 days, but if it is not any more successful than the one was that was attacked in the federal court, it would derail the commission and leave the whole thing up to the federal court. And I suggest this as a delinquency in the plan.

**CHAIRMAN GRAYBILL:** Mrs. Blend.

**DELEGATE BLEND:** Mr. Chairman, I rise in support of the majority subsection. As Mr. Nutting pointed out, the Legislature has a great and vast knowledge of apportionment and redistricting. I feel that this can be informally handed on very well to the commission, who would accomplish this act. I do not think that the Legislature is psychologically fitted to reapportion itself. I think it's too lengthy a program for them to undertake for something that should be accomplished by a nonpartisan, or at least impartial group.

**CHAIRMAN GRAYBILL:** Mr. Cate

**DELEGATE CATE:** Mr. Chairman, I have a proposed amendment to Section 2. I see two things wrong with both the amended—both the majority and minority reports. First of all, the majority report does not take into consideration the possibility of the existence in the future of minority parties or independents. My amendment, which would provide that the party leadership of any political party holding at least 20 percent of the seats in the Legislature shall appoint two members to the commission, would give recognition to independents and to the possibility of minority parties existing in the future. Secondly, the majority and minority proposals tie us into the terms, "majority leader" and "minority leader." In other words, we're mandating by the Constitution that there should be such officers in the Legislature and I think that's something that is appropriately left up to the Legislature, to determine the titles and the methods of leadership. Thirdly, in the minority plan, Tom Harrison, who is the majority leader of the House, said this—he said, "If you give us that type of a plan, I just won't bring the reapportionment plan up for 60 days and then I'll go pick—I'll go with the minority leader and go pick the guy that I want to sit on the plan so that he does what I want him to do," and so I think that the minority plan has that weakness. And so I would move to amend Section 2 to provide as follows:

**CHAIRMAN GRAYBILL:** All right, now just a minute, Mr. Cate. Let me understand what you're doing. I have it here, but at the moment the situation is that the majority report has been moved, Mr. Nutting has proposed a substitute motion which is Plan 2, and do you want to amend the substitute motion, is that right?

**DELEGATE CATE:** I'll move to amend the substitute motion.

**CHAIRMAN GRAYBILL:** By striking everything after the section and putting in yours, is that right?

**DELEGATE CATE:** Right

**CHAIRMAN GRAYBILL:** Okay.

**DELEGATE CATE:** And would you like to have the clerk read it, or do you want me to read it?

**CHAIRMAN GRAYBILL:** The clerk can

read it, I think. It's this—it's—I have it—just a minute until I make a note on it here.

**DELEGATE CATE:** I might also add that I have additional copies here.

**CHAIRMAN GRAYBILL:** Have you got enough to put out?

**DELEGATE CATE:** I've got about 25 of them.

**CHAIRMAN GRAYBILL:** Well, let's pass them out for some of them. Now, Mr. Clerk. The clerk will read Mr. Cate's amendment to the substitute motion of Mr. Nutting.

**CLERK SMITH:** "Mr. President, I move to amend substitute Section 15, subsection 2 through and including 6—page 28—subsection 6—page 28 and 29 of the Legislative Committee proposal by deleting these subsections and inserting in lieu thereof the following language: "subsection 2: Immediately upon enactment of this section and following each decennial census there shall be a reapportionment commission established by the legislature in the following manner. The party leadership of any political party holding at least 20 percent of the seats in the legislature shall each appoint two members to this commission. These members shall choose an additional member who shall act as chairman. If the members are unable to agree on a chairman, a majority of the supreme court shall appoint the same. No member of the commission shall be an elected official of the state of Montana. The commission shall draw up a plan for reapportioning and redistricting legislative and congressional districts and submit this plan to the legislature at the next session after the decennial census figures are available. Within 30 days after submission to it, the legislature shall return the plan to the commission with its recommendations for change and the commission shall, within 30 days thereafter, file with the secretary of state its final plan and the same shall become law. The supreme court of Montana shall have original jurisdiction to review commission plans. An action to review a plan must be brought within 60 days after it is filed with the secretary of state. After enactment of a valid plan this commission shall be dissolved until the next decennial census.' Signed, Cate."

**CHAIRMAN GRAYBILL:** Very well, if the Chair may summarize—as I understand it, we are now debating Mr. Cate's amendment to the substitute motion. Now, the point of Mr. Cate's amendment is that part of the reapportionment commission will be made up of persons nominated by any political party that holds at least 20 percent of the seats, so that it gives minority parties some representation. This commission then submits its plan to the Legislature; the Legislature has 30 days to make suggestions and thereafter the commission shall file its final plan after it's considered the legislators subject—Legislature's suggestions. So, again, the commission files the final plan here. Now, we're debating Mr. Cate's amendment. Is there discussion?

Mr. Joyce.

**DELEGATE JOYCE:** I don't know if this confuses the issue, but I just raise this one point. Under all three of the amendments that are under discussion there is this procedure about giving the Supreme Court original jurisdiction in the matter, and I submit to the Convention that that just will not work, and for this reason. After any plan, whether it's adopted by a commission or the Legislature and has the force and effect of law, that plan must meet the test of the 14th Amendment to the federal Constitution. Therefore, at any time we cannot put any statute of limitations on anybody challenging that particular plan. So, therefore, you cannot divest the federal courts of jurisdiction and the United States Supreme Court has set up this procedure that whenever there is a challenge to a particular apportionment plan that it's referred to a three judge federal court. So, therefore, I think inherent in all these plans is this idea of referring it to the Supreme Court. It is superfluous and unnecessary and, as a matter of fact, a waste of time. Because assuming, for example, whichever plan may be adopted either by the Legislature or by a commission, and it's then sent over to the Supreme Court and the Supreme Court unanimously approves the thing, there's nothing to stop anyone from the very next week bringing an action in the federal court and saying, "Notwithstanding the learned members of the Montana Supreme Court having approved this, I still believe that it violates the 14th Amendment to the federal Constitution." And the federal court will then take jurisdiction in the matter; and so involving the Supreme Court in it is not meritorious at all. And I just point that out so that if we were to pass Mr. Cate's motion as written, that that particular portion of it ought to come out, but I'm not prepared to make an amendment at this time. I just want to point that out to the assembly.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Will the gentleman from Yellowstone, Mr. Cate, yield to a question?

**DELEGATE CATE:** (No audible response)

**DELEGATE SCHILTZ:** Mr. Cate, if I understand your proposal, the census would be, in say, 1980. The appointment of the commission by the Legislature would be the next year, 1981. The enactment by the Legislature would be the third year, 1982; and the reapportionment would go into effect in 1984. Is that correct?

**DELEGATE CATE:** That's not correct. That's not the intent of the plan.

**DELEGATE SCHILTZ:** Would you explain why that isn't so?

**DELEGATE CATE:** If you'd tell me what station you're listening to. (Laughter)

**DELEGATE SCHILTZ:** It's KBBL—is that yours, Betty? (Laughter)

**DELEGATE CATE:** Okay.

**CHAIRMAN GRAYBILL:** The problem on the noise is that when certain of the mikes are picked up, they pick up a radio station, and that would be all right, but it's the wrong one. (Laughter) But we're going to continue to work on it, so just talk loud.

Mr. Cate.

**DELEGATE CATE:** Mr. Schiltz, it is the intent of this amendment that after a decennial census that this commission would be appointed and would, at the next session of the Legislature, submit to them a plan for their consideration and suggestion, and that plan, within 30 days thereafter, would be filed with the Secretary of State and become law, and it would take place in the year 1981—or 1981 (Inaudible)...it would take place in that year—all in that year. With regards to the comments that Mr. Joyce made about the Supreme Court of Montana having original jurisdiction, there were several thoughts on this. We thought it appropriate perhaps to specifically provide for a place of review for the Montana citizen. Under the present system there is a race to the courthouse. Tom Towe, who is one of the attorneys on the present case which is in the ninth circuit, indicated that he was racing with another group to see who could get to court first—he to federal court or the other group to state court; because if it's in the state court, the federal court won't look at it until after the state court has had the opportunity to review it. And it's thought that perhaps with our Supreme Court of Montana reviewing it—we might avoid the federal court coming in and dictating the terms of our reapportionment here in Montana. And we thought by providing for original jurisdiction in the Supreme Court that we might be preventing the interference of federal courts; and if our Supreme Court found it was unconstitutional and sent it back to the commission, this would be less expensive than having to go to San Francisco, or having a three-man court hearing the situation and having outside interests—by that I mean three federal courts outside of Montana—three federal judges—deciding how our reapportionment should be. But there is some validity to the statement that it is superfluous because utlimately the question could be reviewed by a three-man federal court—and might well in any case be. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, I have a question which I think is relative to each of the three proposals that we now have and I don't know who to ask. Who—which person should I ask?

**CHAIRMAN GRAYBILL:** Well, you ask your question and I'll have a better idea, Mrs. Bowman. (Laughter)

**DELEGATE BOWMAN:** Okay, my question is that the other day when we were discussing the General Government Article we agreed that political parties might not be in existence in 50 years, and therefore, we deleted reference to them. Now, it appears to me that all three of these proposals make reference to minority and majority party in the Legislature and my question is, is this contradictory to what we did the other day?

**CHAIRMAN GRAYBILL:** Mr. Cate, have you—could you speak to that?

**DELEGATE CATE:** Mr. Chairman, I didn't hear.

**CHAIRMAN GRAYBILL:** Mr. Cate, she's concerned that we may not have political parties or we may have different political situation in the future, and your recommendation discusses political parties. Have you anything to say about that?

**DELEGATE BOWMAN:** Party leadership I guess is what it says. No, it says—

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Certainly, I think that this amendment—Plan 3, we'll call it—does provide more flexibility in that area. It doesn't tie it down to the majority and minority leadership of just two parties. It allows the party leadership of any political party, and I don't foresee or anticipate the disappearance of political parties. I think they're—even though this has turned out to be a rather nonpartisan body here, I do believe that the parties are still alive and very viable. But I did feel, Mrs. Bowman, that it was necessary to recognize the possibility of third or fourth parties and I haven't answered your question—

**DELEGATE BOWMAN:** No, you haven't. (Laughter)

**DELEGATE CATE:** —which is typical lawyer talk—but I would probably answer it in this way. I don't foresee the disappearance of political parties. I think you are going to have political parties for the foreseeable future and that those political parties are going to be organized and have leadership.

**CHAIRMAN GRAYBILL:** Mr. Nutting, do you care to comment?

**DELEGATE NUTTING:** Mr. Chairman, I think the only thing—problem with all of us is that we feel that there—in any reapportionment there's real problems with possibly gerrymandering of districts and that if we can keep the membership of the commission as relatively nonpartisan as we can, and we have a lot of problems trying to arrive at how to do that. Most any other suggestion that we came up with we were unable to arrive at a conclusion as to how to do it and this was the method accepted by most of us in all plans.

**CHAIRMAN GRAYBILL:** Mr. Skari, do you care to comment?

**DELEGATE SKARI:** Mr. President. Well, Mrs. Bowman, we have to anchor the choice of an appointing authority to someone or something. We did look at a lot of plans and we felt this was the best choice. This was the least vague and the least fuzzy. We realize there are problems when we look that far into the future, but we specified the majority and minority leaders to achieve a certain partisanship on the commission to get this effect. The impartiality, we hope to get out of the Chairman whose vote would be the key vote here, but we felt we had to anchor this appointing authority to something.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Will Mr. Cate yield, Mr. Chairman?

**CHAIRMAN GRAYBILL:** Mr. Cate?

**DELEGATE CATE:** I would.

**DELEGATE JAMES:** Yes, under your plan here, would it not be possible, should we have a third party, or two minority parties to control the commission by having slightly over 20 percent. They'd have four votes and the majority party would have two votes, isn't that right?

**DELEGATE CATE:** The majority party—if there were three political parties, you feel that two minorities could control?

**DELEGATE JAMES:** Yes.

**DELEGATE CATE:** They could appoint two members apiece but the problem with this, Mr. James, was this—and the reason that we felt we had to include and make provision for party leadership or recognition of parties was that Mr. Taylor, who is the present geographical redistricter in Montana from the university—the guy that's been doing it—said that he could gerrymander either political party out of office. He said he could change the whole complexure [sic] of the Legislature just by gerrymandering unless we provided some method of representation of political parties.

**DELEGATE JAMES:** Yes, but isn't it unrealistic to have the two minority parties control the redistricting if the majority is, say, 55 percent, 45 percent could change the entire complexion, couldn't they?

**DELEGATE CATE:** There is that possibility. Maybe that figure should be changed to 30 percent.

**DELEGATE JAMES:** Well, isn't this all the more reason why we should go back to the committee's recommendation?

**DELEGATE CATE:** That just the majority and minority leaders do it?

**DELEGATE JAMES:** Yes.

**DELEGATE CATE:** I don't think so because that does not—(Inaudible).

**DELEGATE JAMES:** Well, I do think so. I think we're running around talking about parliament and everything else here, rather than the realities of the situation.

**DELEGATE CATE:** Well, I feel that even in this body that there is a third party and that is the Independents, and that if we were redistricting here that they ought to have a voice in what's being done, and that's all I'm asking for is a voice.

**CHAIRMAN GRAYBILL:** Mrs. Bowman

**DELEGATE BOWMAN:** Mr. Chairman, could I ask Mr. Cate another question, please?

**CHAIRMAN GRAYBILL:** Mr. Cate, will you yield?

**DELEGATE CATE:** Certainly.

**DELEGATE BOWMAN:** Mr. Cate, suppose for fun we pretend like we are the Legislature in session now, a nonpartisan body about to appoint the reapportionment commission. How would you suggest that we go about it?

**DELEGATE CATE:** How would I suggest we go about it if we were the Legislature? Us Democrats would take over. (Laughter)

**DELEGATE BOWMAN:** (Inaudible)... nonpartisan.

**DELEGATE CATE:** Well, that's hypothetical. I would suggest that [there] be party caucuses of the Independents, if they had 20 percent representation here, the Republican party and the Democratic party and that the party leadership of that caucus select two people, probably former legislators who had some knowledge of apportionment problems—two people to represent their party on this commission.

**CHAIRMAN GRAYBILL:** Mr. Harlow.

**DELEGATE HARLOW:** Mr. Chairman, I feel that we are wasting a lot of time on nonoperative alternate proposals. Under Mr. Cate's plan, one party could dominate all of the members on the commission; he says you got to have at least 20 percent. I have seen the—or I have read about the Legislature when they were less than 20 percent members of one political party, so then you would have the majority and if you had three or four different political parties, each of them containing 10 percent or even 15 percent of the vote, they would have no say-so, as I understand Mr. Cate's proposal. They would have no say-so whatsoever in appointing the commission. The other proposal, the minority proposal, doesn't allow any reapportionment till after 1980, so we'd have no reapportionment regardless of what they read into it. That is, unless they put in something [but] what's on the printed page. It says, "In the session preceding each federal decennial census the reapportionment commission shall be established." Starting as now, it'll be 1980 under the present rule of census-taking before any reapportionment commission will be established. So it is not workable and the majority report has it that immediately after this we will have a reapportionment commission set up and then after each census-taking after that, we will set up one. It allows the various different ways to get the people participation in the reapportionment, and it does not allow this dilatory method as in Plan Number 2. So, I think it's about time to start voting and use that quality that Representative Garlington proposed here the other day; and let's get some voting done and settle down to a little sort of reasonable thinking.

**CHAIRMAN GRAYBILL:** Mr. Hanson

**DELEGATE ROD HANSON:** Mr. President, Mr. Harlow brought up one of my points and I agree, I don't think that in the minority report we would have reapportionment until after the decennial with the language we have here. And then I'd like to point out in Mr. Cate's second proposal that he has provided for this being done in the first paragraph after the enactment of this section—in other words, the reapportionment—but then in setting up his commission and making it active, he left that part out. And I'm sure Mr. Cate intended that he would have something in there, maybe between lines three and four, that would say something to the effect that after the enactment of this section and at the next session after the decennial census figures are available. Would Mr. Cate yield to a question on that?

**DELEGATE CATE:** I would so amend it. I think you're right. It probably should provide—I was trying to cut down on the language, and in the second paragraph in the fourth line, after the words "the decennial census figures are available," should be added the words "or upon enactment of this—or upon enactment of this section period". Those four words, or five words should be added—"upon enactment of this section", and I think that would then read right. I think that Style and Drafting could probably take care of that little problem, with those words attached on there to show the true intent.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I think Style and Drafting can take care of it right now by defeating this proposed amendment. My problem with this amendment is that no matter what Mr. Cate's personal intent is, I cannot read this amendment without it requiring at least 3 years to put a reapportionment into effect and more, if we should have something other than annual sessions. Besides that, in the last line, I fail to see in both this and Plan Number 2 how a committee can enact any kind of a plan that must be done by the Legislature.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I'd like to speak in opposition to Mr. Cate's plan. Later, I would like to submit another plan if it comes to that. But, for one thing we are putting far too much statutory measures into this, and I feel that by deleting the parts that call for a specific structure, perhaps by saying, "in the session preceding each federal decennial census a reapportionment commission shall be established by law", would be far better. And after we vote on this one, this—I hope that you will vote—do not pass.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, there was a time when I thought that I was a flaming liberal, but now I've found that I am quite conservative. I still believe in representative government. I think that the tendency in this Convention to delegate authority to commissions and boards and one thing and another, is sapping at the roots of representative government and I dislike it. I think that the closest thing we have to democracy is a representative government and our legislators, whether you have them in a bicameral or a unicameral government, are elected by the people. They are the closest force in government to the mass of the electorate that exists. I think that they should be the first, the initial force in providing for reapportionment. I do not think under any of these plans, including the minority program that I signed for, that delegating—delegation by the two majority and minority parties or in Mr. Cate's plan, all—a kettleful of parties, each one of 'em delegating authority to two members of a commission, is going to get away from partisanship or gerrymandering. People who are elected or named to commissions by political leaders are likely to have the same connection and faith and direction as the leaders who appointed them. So you are not getting away from it. I think that Mr. Cate's plan suffers from the points that were brought out by various speakers. I think that the minority plan suffers from the fact that no provision is made in verbiage for the next reapportionment. Now that next reapportionment is going to take place after this Convention concludes its deliberations and settles upon districts, be it either bicameral or unicameral. You're going to have to have reapportionment. You're—in the material that we find in these proposals there's a number of senators or a number of representatives are listed and a number of delegates or a number of representatives of one type or another. Some say 30 and 40, or 40 and 80; some say 50 and 100, and so forth, so it's inevitable that we're going to have some redistricting right after this Convention is completed and the next Legislature comes along. Who's going to do that? The next Legislature is going to have to set the groundwork for it. And as far as gerrymandering is concerned, you're going to have gerrymandering anyway unless you keep the focus of publicity upon it all the time, whoever is doing it. I submit that if you follow the majority program through to its conclusion and everything—every maneuver and the mechanism afforded is followed to its logical conclusion that you could have 200 days in the preparation of the apportionment, and you count them—just read through it. You can dig it out. What's wrong with giving the Legislature 60 days to try to apportion, and then if you can't, why, then it would go to the commission. Our gentleman, Mr. Garlington from Missoula, he says, "No". He says, "There's no way to do that; it will have to go to court." I submit that no matter what happens you are going to end up in the court unless somebody is able to prepare a plan of apportionment nonpareil, and I am a little bit dubious about the ability of people to accomplish that. I call your attention to the recent situation in Minnesota, where we have a nonpartisan bicameral Legislature. They failed in apportionment, unlike in Montana this last time. The court stepped in, just like the court steps in in Montana. They said, "It's okay, you met our plans", no matter how grudgingly that was made. But in Minnesota the federal court stepped in and they said, "No, your plan is no good. It won't conform to the dictates of the 14th Amendment and the Supreme Court U. case", so what are we going to do? We will set up a Legislature for you. So they apportioned Minnesota 35 senators and 105 representatives in the Legislature. The court did it, just like the court okayed the plan of the Montana Legislature in '71. But, do you know what happens then? The court deal is still unfinished. The Minnesota Senate has appealed the decision to the United States Supreme Court. So, you're probably going to have to end up in the Supreme Court of the United States. I submit that the minority plan, with a little bit of axle grease, is something that can be made to work.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, I am a member of the committee who supports the majority proposal that as given by Mr. Skari. We argued this matter off and on for 17 or 18 days up there in the fourth floor behind this chamber, and subcommittees met until late, very late at night. I have one objection I would like to point out to the two minority reports. Both of them refer to a decennial census. We have been advised that there is a strong possibility that the Bureau of Census will go to a quintennial census. If this is true, both minority reports will be illegal, perhaps before they have even been adopted by the people next June. Paragraph 2 of the majority report, which says, "immediately upon enactment of this section and in the session preceding each census"—this fatal error is missing from the majority report. Finally, I subscribe to the views of Mr. Garlington, Delegate J.C. Garlington. I find myself, Mr. Chairman, surrounded, except on my left, by Republicans. My friend, Otto Habedank, before me; my learned brother, Marshall, behind me; my dear friend and committeemate, John Leuthold, to my right. There is no way, as a member of a legislative body, that I could ever, ever redistrict these people out of a job. Therefore, I support the majority proposal.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, I move the Committee of the Whole stand in recess for 15 minutes.

**CHAIRMAN GRAYBILL:** Motion is to recess until 3:15 p.m. All in favor say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**CHAIRMAN GRAYBILL:** Carried.

(Committee recessed at 3:00 p.m.—reconvened at 3:20 p.m.)

**CHAIRMAN GRAYBILL:** The Convention will be in session. We're considering Mr. Cate's amendment to substitute amendment of Mr. Nutting to Sections 2, 3 and 4 of Article XV. Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, during this recess, I have composed a revised paragraph for Section 2, which I would think could be substituted for the present 2, 3, 4, 5 and 6 paragraphs in the majority proposal, the—

**CHAIRMAN GRAYBILL:** Well, Mr. Garlington, you're behind Mr. Mahoney, Mrs. Bates, and one other, but I'll be glad to put you on the list. (Laughter) In other words, we've got the amendment and we've got the substitute and we're full up until we dispose of one or two of the present plans. Mr. Cate, do you want to close?

**DELEGATE CATE:** I'm going to move to withdraw my amendment. I'm a little bit disappointed in the attitude of some delegates. All I'm trying to do is do what's best for my people and it's fine to criticize someone else's work but I think when you do that, you ought to make suggestions for its improvement, rather than just criticize it, and I've tried—I worked for 2 weeks on the reapportionment subcommittee—and tried to put together something that I thought would be the best thing to work under the system that we have in Montana with our Legislature and without cluttering up the Constitution with a lot of detail. But, apparently, it's not acceptable to a great majority here and I think that some of the other motions that some of the other delegates desire to make might have more acceptability and therefore I would withdraw my motion, Plan Number 3

**CHAIRMAN GRAYBILL:** I understand, that Mr. Cate, you have withdrawn your proposal. Is that right?

**DELEGATE CATE:** (Inaudible response)

**CHAIRMAN GRAYBILL:** Very well, then I'll recognize Mrs. Bates, who's next on the list.

**DELEGATE BATES:** Mr. Chairman, I move for a substitute motion, and it will read—I think you have it up there—would you prefer reading it, or do you want me to?

**CHAIRMAN GRAYBILL:** The clerk will read your substitute motion.

**CLERK SMITH:** "Subsection 2. Immediately upon enactment of the section and in the session preceding each federal decennial census, a reapportionment commission shall be established by law. The commission will have the power to reapportion and must present a plan to the legislature within 60 days of the first day of the first session"—and excuse me—"and must present a plan to the legislature, if the legislature fails to act within 60 days of the first day of the first session after the census enumeration. The commission's apportionment plan shall be filed with the secretary of state and become law. After enactment of the final plan, this commission shall be dissolved."

**DELEGATE BATES:** Thank you.

**CHAIRMAN GRAYBILL:** May I have the plan, Mr. Clerk? Mrs. Bates, before you discuss it, may I put it in reference to the other two? Mrs. Bates' plan takes the central section—the central sentence out of Plan 2 and simply says that the commission will be established by law and that then the commission will reapportion and present the plan to the Legislature, and if the Legislature fails to act within 60 days, then the commission's plan will go into effect. But she has eliminated the central section of Plan 2—central sentence of Plan 2. Plan 2, you'll remember, calls upon the commission to present its plan to the Legislature and if the Legislature acts within 60 days, then its plan becomes effective. And Plan 1, or the majority proposal, simply sets up a commission which reapportions. Mrs. Bates.

**DELEGATE BATES:** Thank you, Mr. President, you did a very good job of explaining. I'll sit down.

**CHAIRMAN GRAYBILL:** Is there any more discussion?

Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman, I would like to move to amend all of Section 15—and I have it written out. I'll be glad to send it up to the clerk if you'd like to have it.

**CHAIRMAN GRAYBILL:** Well, Mr. Nutting—or—Mr. Choate, let's see. Mr. Nutting has moved a substitute motion and Mrs. Bates has amended the substitute motion. So, you're in the same position you were—or Mrs. Bates was with Mr. Cate. Until we get rid of one of the motions, there's no room for another amendment. You certainly may tell what you will do, however.

**DELEGATE CHOATE:** All right. I'd be glad to read it. This is patterned after the new article that was—or new section that was written into the North Dakota new Constitution. It reads as follows: "A legislative reapportionment commission, consisting of electors appointed by the district judges in a number and manner as shall be established by the district judges, shall fix the number of legislators and divide the state into legislative districts of compact and contiguous territory. The commission shall guarantee as nearly as practical that every voter is equal to every other voter in the state in the casting of ballots for legislative candidates. The commission shall prescribe its own procedures. Upon agreement by a majority of its members, the commission shall file its reapportionment plan with the secretary of state and it shall become effective 60 days after the date of filing; provided, the supreme court in its exercise of original jurisdiction may review any plan adopted by the commission. If the plan fails to meet state or federal constitutional requirements, the court shall direct the commission to revise the plan within a stated time." In other words, it would leave it up to the courts to determine the commission, and it could be reviewed by the Supreme Court, and it would take it out of legislative hands and the matter of partisanship and all that. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harper

**DELEGATE HARPER:** Mr. Chairman, would Mr. Garlington yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Garlington?

**DELEGATE GARLINGTON:** Yes, I would.

**DELEGATE HARPER:** Mr. Garlington, in view of the fact that we need to have all kinds of information before us before we can vote intelligently on whether to adopt the amendment before us now, without putting your proposal in the form of amendment, would you enlighten us as to what kind of thing you would propose were you to propose it later on? (Laughter)

**DELEGATE GARLINGTON:** I would be very glad to. My proposal is to delete Sections 3, 4, 5 and 6 entirely, to rewrite Section 2 to say in substance that, upon enactment of the new Constitution, and at the time of the succeeding census, the legislative districts should be reapportioned and adjusted as necessary to conform with the requirement of Section 1, which we have already passed, which provides that each district shall consist of compact and contiguous territory and be so nearly equal in population as is practical. And then just to say that the means of so doing should be by an impartial commission established and functioning as provided by law, and leave all of this material to be worked out as the future unfolds.

**DELEGATE HARPER:** Mr. Garlington, I appreciate your doing that.

**CHAIRMAN GRAYBILL:** The Chair is summarizing these so we can understand what we're doing. Mr. Schiltz, would you care to outline your plan now?

**DELEGATE SCHILTZ:** Mr Chairman, I was just tidying up. It was my impression that on Plan 2, and so far as I could tell from what I heard of Mrs. Bates' proposal, that there was no provision made for the reapportionment immediately following the adoption of this section, if it were adopted, and so I was merely saying that, in the sessions following the adoption of this section of the Constitution and preceding each decennial census; it only obtains if one of these proposals gets through, I guess. I don't want to propose it for everyone's proposal, is about the size of it.

**CHAIRMAN GRAYBILL:** Mr. Mahoney, do you want to—is Mr. Mahoney—do you want to explain yours?

**DELEGATE MAHONEY:** Well, Mr. President, I am going to try and move to amend the majority report on page 8, and all I'm trying to do is to take the word, "90", and reduce to "60"; then go down, after the word, "shall", in line 6, strike the rest of that section—or, that line—and insert the following: "The commission shall draw up a plan to reapportion the legislature which shall be submitted to the legislature no later than the 10th day of the session. The legislature may apportion itself or, if it should fail, then the commission shall study and apportion the legislature." In other words, I'm leaving—letting us—first let the Legislature try it after they've got all the facts from the apportionment commission and if they should not do it then that commission shall apportion the Legislature. I'm just trying to let the Legislature have a chance.

**CHAIRMAN GRAYBILL:** Very well. Now it appears to the Chair that we have three possibilities only—three main possibilities—and then we can clean up the language. One is the majority report which sets up a commission and the commission reapportions, and it tells how. The second is the minority report which sets up a commission and the commission reapportions and files its plan but the Legislature has, during its first 60 days, the right to reapportion and if it can do so, the Legislature reapportions. And then, Number 3, Mrs. Bates' plan, is very similar to that. It simply sets up a commission—it simply lets the Legislature set up the commission by law. In other words, it does away with the complicated method of choosing the commission in Plan 2, and it says again that the Legislature must be presented with a plan and if it fails to act, why it becomes law. So, really, what we're trying to decide is between letting the commission alone apportion, or let the commission apportion, turn it over to the Legislature and give the Legislature a chance to apportion, and if it fails, then the commission apportion. Now, that's the upshot of what we're up against here. We're on Mrs. Bates' motion which really has the effect of simplifying Plan 2, but not greatly changing the substance of it. If there's—Mrs. Robinson.

**DELEGATE ROBINSON:** Yes, Mr. President, I would like to speak in opposition to the amendment offered by Mrs. Bates. First of all, it does say that a commission may be established as provided by law. Of the 20 states that now have reapportionment commissions, not one of them say "as may be provided by law." The Constitution establishes how the commission is to be formulated. I think we, too, should do this. First of all, if you leave it up to the Legislature, in the proposal offered by Mrs. Bates, they may decide that they may have a commission of 10 legislators to do it. So, in fact, you have not created a commission; you have left the reapportioning to the Legislature which is not what it was specifically stated in the intent and purpose of creating a commission. Second of all, I do not believe that if the Legislature cannot agree on the methods of apportioning, they're probably not going to be able to agree on the method of appointing a reapportioning committee. Of 20 states that have them there are 15 different ways to appoint an apportioning committee. You can have the judges do it; you can have the Governor do it; you can have the leaders of the party do it. This isn't the question. It's whether or not you're going to have a commission and whether or not you're going to pass the buck back to the Legislature to set up this commission. I am a bit confused because all of these proposals, in essence, have good points. I am in agreement that probably the majority report as it is here could be amended to where it would all fit in one section and where you might give the Legislature a bit of a chance to participate. I submit that if you do not have a commission, if you leave it to the Legislature, you will in essence have a commission which consists of the Supreme Court. This is what happened in Minnesota because they did not have a commission. Of the 20 states that have commissions now, 19 of them have submitted plans for reapportionment to the Supreme Court. Only one of these has not—has been unconstitutional. Of 14 states that have Legislatures that have submitted their own proposals since 1965, 12 of them have not failed to meet the one man, one vote requirement. I think the commission is necessary, the point being now, I think we should decide whether we want a commission to initiate or whether we want the commission to be a backstop agency. In the majority report you have the commission initiating the plan; in the minority report you have it as the backstop agency. I have another plan and if we get rid of any of these other plans, then I will offer my other plan (Laughter) and hopefully we will be able to proceed from there.

**CHAIRMAN GRAYBILL:** Very well, the issue, I think, is on Mrs. Bates' substitute—or amendment to Plan 2. The purpose now of deciding on Mrs. Bates' plan is to decide whether or not you want the commission appointed by law, or whether or not you want to go back to Plan 2 which has the commission appointed in the manner set forth in Plan 2. So, Mrs. Bates, do you want to close?

**DELEGATE BATES:** I would like to, Mr. Chairman. Thank you. In regards to deleting the part where the commission is structured, many—in looking over the constitutions of other states, each state seems to do this differently—some with judges, some with elected officials, some with the Executive Department, and so there is no set means. As far as giving the Legislature an opportunity to reapportion themselves, the majority—the states within the United States—the majority of them did reapportion themselves between the years of 1963 and 1970, and most of these have not been overturned. And I think the Legislature would have a little bit better understanding perhaps than even a commission, but by having this backstop commission to do the job if they fail to do so, I'm sure would simplify it. In regards to a question that was asked, the opening statement says that "upon enactment of this section and in the sessions preceding each decennial census", so it would take care of now and later. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the question is on Mrs. Bates' amendment to the substitute motion. It reads: "Upon the enactment of this section and in the session preceding each federal decennial census, a reapportionment commission shall be established by law." That's the main point of her motion—it's to be established by law. Then, it goes on and says—it strikes the next two sentences of Plan 2 and it says: "The commission will have the power to reapportion and must present a plan to the legislature. If the legislature fails to act within 60 days after the first day of the first session after census enumeration, the commission's apportionment plan will be filed with the secretary of state and become law. After enactment of the final plan, this commission will be dissolved." So many as shall be in favor of Mrs. Bates' amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and the amendment fails. All right, now we're considering the minority report, Plan 2, which provides—and now the issue is clearly drawn between the majority and minority reports and the main issue, although there's a lot of difference in language, is that in the minority report, the commission will have the power to reapportion if the Legislature fails to do so within 60 days, so that the Legislature may, within the first 60 days that it's in session after the census, the Legislature may, in fact, itself reapportion. Under the majority plan, the commission reapportions. So the issue is now on the minority plan of Mr. Nutting that Section 15 be amended and so, Mr. Nutting, would you like to close?

**DELEGATE NUTTING:** Mr. Chairman, I don't plan on closing. I would like to say that this Plan 2 has done exactly what we hoped it would do. In that it has brought this issue squarely before the house and there certainly is no shortage of plans, so I will withdraw Plan 2 from consideration.

**CHAIRMAN GRAYBILL:** Very well. Plan 2 is withdrawn. Now we're back on Plan 1. Plan 1 is the majority report.

Mr. Garlington.

**DELEGATE GARLINGTON:** I would like to make a motion to amend Plan 1 by substituting therefor the amendment which I wrote out and which has now been placed upon your desk there.

**CHAIRMAN GRAYBILL:** Very well, Mr. Garlington will amend Plan 1. Just a minute here. This amendment would strike from Section 16—15, Sections 2, 3, 4, 5 and 6. So it strikes everything after Section 1. Section 2 would read—Subsection 2 would read: "Immediately upon enactment of this section and in the session next preceding each United States census, the legislative districts shall be reapportioned and adjusted as necessary to conform to the requirement of Section 1, the means of so doing to be by an impartial commission established and functioning as provided by law." So the purpose of Mr. Garlington's amendment is to replace all the machinery in 2, 3, 4 and 5 by a sentence that says "that after each sentence and immediately after this section", which means after the Constitution is adopted, if it is, then we will reapportion by an impartial commission established and functioning as provided by law. Mr. Garlington, any other—do you wish to debate it further or do you wish to discuss it further?

**DELEGATE GARLINGTON:** No, Mr. Graybill, I think we had better just proceed with this.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I rise in opposition to the proposed amendment for the simple reason that I believe that that is—this contravenes Article IV, Section 4 of the United States Constitution which guarantees a republican form of government. This to me means that we ought to at least afford the opportunity to our elected representatives to cause the reapportionment to be had following a census, or preceding the census. I very much like Mr. Mahoney's suggestion. I agree 100 percent that we must have a commission where the Legislature fails to do its job. However, I believe the commission ought to first submit its proposed plan to the Legislature, and with a deadline, so that if the Legislature which, remember, are the elected representatives of the people as distinguished from an appointive commission, to at least afford them one opportunity with a deadline to effect a reapportionment. If they don't act, then let the commission go ahead. But I think it's very important that we try to preserve the reapportionment by the elected representatives rather than by an appointive commission. I like very much the majority's proposal in its entirety if it would simply, instead of first have this report of the commission filed with the Secretary of State, file it first with the Legislature with a deadline to either adopt that plan or come up with its own plan, and then if they don't act, put it back in the commission and have theirs take the force of law.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman, we've been discussing this now for some time and it's the kind of discussion I like to listen to. Now, I will take it upon myself, as Chairman of the committee, to ask that you give us time overnight to present some clarification on the majority plan. For example, I had some sheets passed out to you yesterday—or Saturday morning—which would have amended the introduction of paragraph, or subsection 2, which I have not presented to you, but it says: "In the legislative session following ratification of this Constitution and in the session preceding"—that would put the Legislature to work next in 1973. However, after Mr. McNeil's proposal there, would you give us the authority to work on this overnight and rework this Proposal Number 1, and we can incorporate this idea of Mr. Mahoney's like Mr. McNeil liked, and then you can talk about the two proposals with those two changes. So I would move that we postpone further action on Article—Section 15, subsections 2, 3, 4, 5 and 6 today.

**CHAIRMAN GRAYBILL:** Until—you can't—

**DELEGATE AASHEIM:** Until tomorrow morning.

**CHAIRMAN GRAYBILL:** Until tomorrow morning at 9 o'clock? All right, the motion of

Mr. Aasheim is that we postpone consideration of subsections 2, 3, 4, 5 and 6 of Section 15 until February 23rd at 9:00 a.m.

Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman. I'd like to resist that motion. We argued long and hard in committee on this. We passed it. It was submitted by one of the committee members and I don't see why we just can't go ahead and finish now.

**CHAIRMAN GRAYBILL:** Is there further discussion?

(No response)

**CHAIRMAN GRAYBILL:** If not, all in favor of Mr. Aasheim's motion to postpone consideration until 9 o'clock tomorrow morning, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. We'll use the voting machines. Vote Aye or No. Vote Aye if you want to wait until tomorrow; vote No if you want to go ahead now. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** 67 delegates having voted Aye and 19 voting No, it's now passed until tomorrow morning at 9 o'clock. Will the clerk please read Section 16 of the Legislative Article?

**CLERK SMITH:** "Section 16. The People's Advocate, subsection 1: The majority and minority leaders of the legislature shall together appoint the people's advocate." Subsection 1 of Section 16, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Aasheim, who is supposed to take Section 16? Oh, all right, Mr. Leuthold.

**DELEGATE LEUTHOLD:** (Inaudible)... after having under consideration Section 16 of Proposal Number [illegible] that it recommend the same do pass. Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Leuthold.

**DELEGATE LEUTHOLD:** Section 16 adds a new section to our Constitution known as the people's advocate. I'd like to just speak on both sections together. I think it all kind of goes together here.

**CHAIRMAN GRAYBILL:** Very well, shall I have the clerk read Section 2, Mr. Leuthold?

**DELEGATE LEUTHOLD:** Yes, I believe it'd be best to consider them together.

**CHAIRMAN GRAYBILL:** Very well.

**CLERK SMITH:** "Subsection 2. The people's advocate shall have the duty to provide information to any person upon request relating to government; and shall have subpoena power and authority to investigate on complaint or on his own initiative any act or omission of any agency of government, and take appropriate action. The legislature shall provide for this office and its operation."

**DELEGATE LEUTHOLD:** Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Leuthold.

**DELEGATE LEUTHOLD:** The people's advocate is a better term for the two proposals that were presented to the Convention, known as ombudsman; and since most of us can't say that, we thought that people's advocate was a little nicer term to use and a little more descriptive of the position that we're trying to present. Now, the section itself explains quite well the people's advocate and the comments are quite—they explain quite well. But I would like to add to both the comments and the section with a few remarks of my own. Now, generally, the people's advocate has been characterized as a public officer whose job involves investigating complaints by citizens who feel they have been treated unjustly by some government agency. The people's advocate's duty is to investigate these complaints, decide whether the complaints are justified and use as prestige knowledge gained through objective study and, when necessary, publicity to have the situation speedily remedied at no cost to the complainant. Usually he is empowered to initiate investigation on his own, based upon news media and other sources of information. He may or may not be given the power to either instigate or advise prosecution of officials alleged to have broken laws. Normally, the people's advocate would not have the power to overturn a bureaucratic decision. In reality, bureaucrats tend to accept his judgment. This power generally depends on his prestige and as such his pay, tenure status and so forth are usually comparable to a circuit judge. His power and influence, are therefore, somewhat dependent upon the amount of respect a particular people's advocate is able to generate. I'd like to deal a little bit on the history of it. It's quite new in America but a people's advocate has been in existence for a century and a half in Sweden and is strongly used and considered in Denmark, Ireland, Austria, West Germany, Australia, Singapore, India and many Latin American countries. The State of Hawaii was the first to establish a people's advocate in 1962. We have a number of cities who have a people's advocate. It is that the present agency systems are not adequate to handle complaints, as their objective is often to shed the best light on the agency. It is also felt that a people's advocate position is not a substitute for existing complaint channels, but rather is a method of increasing their scope, flexibility and their objectiveness. Finally, it is felt advocates assert that the mere presence of such an office increases governmental fairness and efficiency, as agencies will be less prone towards arbitrariness and injustice when they realize that their actions may be reported in a complaint to the people's advocate. It is felt that this not only helps the individual complainant, but also aids in governmental-citizens relations. I submit this plan and appeal for its adoption.

**CHAIRMAN GRAYBILL:** Very well, the committee proposal is to submit Section 16, the people's advocate.

Mr. Etchart.

**DELEGATE ETCHART:** Mr. Chairman as a substitute motion, I move to amend Section 16, subsections 1 and 2, on pages 8 and 9 of the article—Legislative Article—by deleting the entire section, "and the people's advocate." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, Mr. Etchart.

**DELEGATE ETCHART:** The people's advocate proposal was also considered by the General Government Committee and we were very fascinated with it. We thought it had a lot of merit, but we didn't feel that it belonged in the Constitution. It's presently in three states—Nebraska, Hawaii and Oregon—but in no state have they included it in their Constitution. We didn't know the cost. We thought that if it was a good idea, it could be done by legislation. And our philosophy has been in the committee to leave legislative matters out of the Constitution as much as possible. There was a lot of support for the idea, but we felt that inasmuch as it is an experimental thing—only three states have it—there's possibly some duplication with other agencies working in this same field, that it wasn't constitutional, and I would submit that it doesn't belong in our Constitution either.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman, I resist—I rise to resist Mr. Etchart's movement to delete this motion. I see the office of ombudsman—and I rather hate to omit the word because it took me a long time to learn to say it—but I agree that "people's advocate" maybe is a better term. But I see this as a provision which is in keeping with our interest increasing the ability of citizens to participate in the process of government. Such an office would be a boon to the people who frequently become bogged down in trying to wade through a mire of bureaucracy. The people's advocate, or ombudsman, can help the citizen understand and work through the system. We all know that this is needed. The office, too, is somewhat of a boon to government officials who are frequently under fire from unjustified attacks. History of similar offices has shown that about 90 percent of the complaints received by such an office have been unjustified. Certainly an independent office that shows a complaint to be unjustified can only increase a citizen's respect for his government and the bureaucrats' respect for themselves. I do agree that this could be more appropriately a statutory measure. However, as you recall when Mr. Unruh talked to us about the ombudsman, he suggested that if we really wanted this kind of an office in Montana, it should be written into a Constitution, because the function of the ombudsman, or at least some of it, is at the present time taken care of quite frequently by legislators. We would remove from them, to an extent, the ability to step into the bureaucracy on behalf of their constituents. However, I believe that it is only a relatively few of the constituents who will go to their legislator. It's probably the minority groups, the low-income people, those who don't really understand the system, will have access to a people's advocate where they wouldn't have the same kind of access through the legislators. I recommend that this body do resist the motion of Mr. Etchart's and support the majority proposal.

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman, I support Mr. Etchart's motion. I think it's well taken. The ombudsman, as I understand it, is an office that exists primarily in parliamentary countries. Assuming for the moment that we do not adopt Mr. Kelleher's proposal for a parliament, then the office of ombudsman is inconsistent with our system of checks and balances. We have a provision in our present Constitution, which I'm sure will be in the next one, that says that the three branches of government shall be—shall remain distinct and that they shall act, none of them, within the sphere of the other branch. The ombudsman is designed for a type of government where we don't have that sort of division. And the ombudsman operates to keep a bureaucracy, such as exists under the Fourth Republic in France, from taking over functions which ordinarily would be exercised by the parliament. If we had that type of situation or if we had a parliament, then the office would be justifiable. Under our arrangement what we would have would be some sort of glorified public relations man, and I don't think that the Legislature needs that.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. President, I would like to point out in conjunction with the remarks made by Delegate Arness that the ombudsman is not developed primarily or only for parliamentary systems of government. The states of Hawaii, Nebraska and Iowa all have the office of ombudsman, and they certainly do not have a parliamentary form of government.

**CHAIRMAN GRAYBILL:** Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman, would Mrs. Eck yield to a question?

**CHAIRMAN GRAYBILL:** Mrs. Eck, will you yield?

**DELEGATE ECK:** Yes, I will.

**DELEGATE TOOLE:** Mrs. Eck, how would you plan to have this individual "take appropriate action"—as these words read here?

**DELEGATE ECK:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** I think that the action that he would take would depend upon what kind of a situation there was. Lots of times—in fact I think the studies have indicated that a great deal of his action is in providing information to the person, in other words, indicating to the person what the proper channels are and maybe assisting him in going through these channels. Sometime the appropriate action might be investigating a procedure of a department of government and suggesting changes. Sometimes the action might be really to redress an official. I think that this has happened in states where an ombudsman is used. But appropriate action could mean a great—you know—a great number of different kinds of action in different situations. But for the most part he does, to begin with, speak for the individual complaining. If he finds the complaint unjustified, which he does in, they say, as many as 90 percent of the cases, he then speaks for the governmental agency in protecting the agency against unjustifiable criticism. So, I think that the office is really pretty much free-flowing, and I don't think appropriate action in any two cases might be really the same thing.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I'm most concerned as a response, or as a result of Delegate Eck's response to this question, about a serious violation of our separation of powers doctrine. I first read this to be just investigate and at that stage it would be clearly an exercise of the executive power of our government. However, in response to the question, Mrs. Eck also said, "make recommendations". This is a legislative function. If any single person is going to make recommendations to a governmental agency, this is invading the province of our Legislature. Mrs. Eck also used the word, "redress". This frightens me. This is a judicial function. If some governmental board is doing something wrong, then an action ought to be initiated in our separate branch of government in our Judiciary. If "take appropriate action" includes legislative and judicial functions in addition to the obvious power to investigate, I would strongly oppose it. If the position of people's advocate is truly to provide just information and investigation, perhaps I could find room to support it. But in view of the response to the question, I think it's a violation of our separation of powers.

**CHAIRMAN GRAYBILL:** Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. Chairman, I would support Delegate Etchart. I don't know if it was a motion, a substitute motion or an amendment.

**CHAIRMAN GRAYBILL:** It was a motion to delete.

**DELEGATE ERDMANN:** Motion to delete. I would support this and I would say that this position of ombudsman has been used widely in the various large cities of America, and it's nothing but a fancy name for a complaint department when it's used within a city government. And the mayors and councils like this position because it relieves them of all of the routine of complaints. And we all know that citizens often get the feeling that they're being pushed around by the various offices, probably either in Helena or in their city government, and this is a position that has worked very well in city government just as a complaint department. It keeps the voters happy. And I would be for it, as provided by the Legislature, but not proposed and placed in our Constitution. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** —Chairman, I would like to oppose the substitute motion of Mr. Etchart and support the original motion of the majority for two reasons. One, almost the same reason as Delegate Erdmann has related, except in reverse. I feel that we need a function in government on the state level for this purpose, somewhere where the citizens can go, somewhere where they can get response from government and not get turned away as many citizens feel in the dealings with some of our major departments, be they Highway Department, Fish and Game, or what. I feel that there's a need for this office. In answer to some of the points, or questions, that Delegate McNeil raised, this is clearly an informational investigative-type office in the area of providing information to the citizens. The appropriate action clause which may have caused some question, in practice in other states, has been clearly a question of providing information to the Legislature, if legislative action is necessary; providing information to the Attorney General if judicial action is necessary; and, in fact, providing information to the public so that they may be aware of what is going on in state government. I submit that these functions are all extremely necessary as the bureaucracy, or whatever you want to call it, as the size of state government enlarges. I think there is in fact a need that the citizen has somewhere they can go somewhere that they feel they will be received and not turned away summarily, to hear their complaints. And as Delegate Eck has indicated, I feel that there is a need for government to have some protection, also. And one of the greatest accomplishments of the office in states where they've had it has been that in fact there has been greater confidence in the government once this office was established, because where you have 90 percent of the complaints that have been submitted found to be unjustified, this gives greater confidence to the public-at-large in your government; and at the same time, those 10 percent of justified complaints have been dealt with and corrections have been made. The greatest effort and the greatest power of this office is strictly bringing public attention to the problem. It isn't a legislative function. It isn't a judicial function, and it's not an executive function. It's simply bringing the focus of the public spotlight to bear on the official who may be performing his office in a way which is not desirable for state government. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, I don't like to get up after we spent 3 or 4 hours on apportionment and then had to pass it over, but I would like to say a few things. And I'll try to be as brief as possible. Four states, you now know, have it—not three—Nebraska, Hawaii, Oregon and Iowa. In Nebraska and Oregon and Iowa, the Legislature refused to pass the legislation for obvious reasons. In Hawaii it was passed merely by accident on a vote swap. Now, why doesn't a Legislature like this bill? And why do we lawyers not like it? And I'm going to speak for myself only, as a lawyer. First of all, the ombudsman or the people's advocate takes away the casework from the incumbent legislator. Instead of going to the ombudsman you go to the legislator, and he gets things done for you. And how many of you know how many congressmen have stayed in the United States Congress solely by doing their casework? We have congressmen and senators that have one clerk that does nothing but send out obituary letters. That's all she does is read obituary pages and send those letters out and take care of these little things, like getting people into the V.A. hospital. And at the state Legislature level they could do similar things for their constituents and they keep getting reelected and reelected, and they do not get reelected on their record. And this is, I suspect, is why Nebraska, Hawaii, Oregon and Iowa—all the four states that now have it—did not pass it except in the case of Hawaii in a vote swap deal. Now, what happens to us attorneys? I have read up—our sister—I mean, a province to the north of Alberta and New Brunswick, the only two Canadian provinces to have one—they just enacted it in 1967, and the first year in Alberta they had 32 complaints; in 1968 they had 535 complaints; and for the first 10 months of 1969, which is the only last year I have any record, they had 627 complaints. Roughly one-third of the complaints are rejected, as he doesn't have any jurisdiction, either because of matters still pending in court, an appeal hasn't been run out, and so on. One-third of the cases he actually gets results. He gets the job done for these people. And then, what does this mean? In 1969, he only had to refer two cases to the Cabinet—that meant to the Premier and his ministers. And one was a teacher who wanted his retirement pay back with interest, and they gave this teacher the old razzmatazz and the run-around and finally he kept after them and kept after them, and they decided to pass a special bylaw—this is the way, I guess, they save face. But they did pay the teacher his retirement fund back—apparently he left the teaching profession—and with interest. Now why, as a lawyer, would I be opposed to this? Because you're going to cheat me out of a lot of fees at $30 an hour. Remember, $30 an hour, as I told you before, is for widows and orphans. This is work that we lawyers now handle for a fee. Now, if you want it to keep that way, that's fine but I don't see where we lawyers, in conscience, could really justify a fee and I should say in all honesty, in defense of my own profession, that very often we will not charge a fee for this type of thing. But, on the other hand we may charge a fee and at the minimum rate. It's up to you. If you want to go by the history of the four states that have it in the United States, they all refused—the Legislature refused to pass it. All this does is mandate the Legislature to appropriate the funds for the office. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, members of the assembly. Today, so far, we have almost but not quite established three new boards. We just about established—well, we did establish a new board to figure out the pay for the Legislature and the Judiciary and the Executive. Then, we just about established a board to figure out how we was going to reapportion ourselves if the Legislature couldn't do it, and so forth. Now, we're just about ready to establish another department, and I have a question I want to ask. It says here, "The people's advocate shall have the duty to provide information to any person upon request relating to the government." Thank goodness, we're not a very big state—we only got 700,000 of us. But my question is, and I'm sure the committee has researched this quite thoroughly, how much is this going to cost?

**DELEGATE KELLEHER:** Is that a question?

**DELEGATE ESKILDSEN:** To whoever would answer it. It's information I want.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** In the State of Hawaii—the State of Alberta—no, the Province of Alberta, they still, as of 1969, 2 years—3 years after it was in force—1967, 1968, 1969—had a four-man office and they were handling complaints at the rate approximately 900 to 1,000 a year. The State of Hawaii, the first year it was in effect, that I think 1,062 complaints, but I don't know the size of their office. But assuming that they're as efficient as our neighbors to the north, Alberta, they too have a one-man office. We proposed—regarding cost, we proposed—I don't know if it's in the comments—originally that this man have the salary and prestige of a district judge, and a district judge in Montana now makes about nineteen or nineteen five—I forget—nineteen thousand a year—a district judge....(Inaudible). All right?

**DELEGATE ESKILDSEN:** Mr. Chairman. Thank you, Mr. Kelleher. I've been given this by Delegate Eck and it provides 103,000 for the first fiscal year. Nebraska provided 113,000 for 18 months. I only have this to say is—is this body, we're different from the Legislature in that we don't have to worry about what it's going to cost anybody. All we got to do is figure out a good Constitution. But, I submit to you it's time to take a little look at what we're going to cause the Legislature to have to do. And the next legislative session will be faced with all these extra boards and bureaus and men and that we're causing them in the Constitution to establish. Right here, we've got $200,000 in this one little board if they just do the same kind of a job that other state's done. So, I submit to you it's time to think about this a little bit.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. President, fellow delegates, I rise in opposition to the substitute motion and urge you to support the majority motion. I was one of the delegates that submitted a proposal on this, and when I came over here, I came over here with a large fistful of letters, complaints of people in my district, that asked me if I would look into them for them. They ranged all the way from social security problems to labor problems—all kinds of problems. I submit that the problem is the problem of an unresponsive government. The government that we're hoping to make here, I hope and foresee, will be more responsive. What we're talking about here is the people's bureaucrat. Now, in response to Mr. McNeil's comments, if the Legislature had done its job, supposedly, we wouldn't have any need for this, but what happens to a common citizen out there that doesn't know the legislative procedures, that doesn't know the rules, and we sitting in here the first few days certainly went through this process, didn't we? Now, how is that individual going to get to the Legislature? What happens if his legislator from his own district is not responsive? And many of them aren't. If the judicial had done their job, we say, there would be no need for this perhaps. But what about the many rules? What are the procedures that the common citizen doesn't know in terms of approaching the bench, or even being afraid on the one hand to even approach certain lawyers when they charge $30 an hour, as Mr. Kelleher has proposed. Well, when legislators come over here, they also come with a lot of complaints. I think that if we give this to an ombudsman or a people's advocate, if you will, this will be kind of a legislative relief bill in a way in that it will allow them more time perhaps to get down to what they really should be working at; and that is working with laws and attempting to improve the governmental structures. I also think that this people's advocate in many ways is an educational process. Many citizens will come to this individual or his office and attempt to get redress of some kind and find out for the first time, perhaps, how a governmental agency works, and in the process maybe his complaint will be satisfied. We talk to Mr. Eskildsen's point, if I may. You talk about if it's needed. What about the person? We have had a session—the biennial session in this state—what about the person that can't get anything done between the sessions? Is it only going to be done during the session? Will this legislator come over here from Two Dot or Ekalaka, or where-have-you, and take care of his business? But if he can send a letter to this man that's right in the Capitol, I'm sure that he can get something done. I'm for the majority proposal

**CHAIRMAN GRAYBILL:** Mr. Monroe

**DELEGATE MONROE:** I rise in support of the people's advocate for this—one of the reasons I support it is for this reason. So many times, agencies and boards and officeholders have little small procedures that are never voted upon by the Legislature, or small little rules that they go by in their particular office or agency that we don't have anything to say about, and sometimes they really infringe upon our rights. And if we had someone that we could go to and tell them that we don't think the procedure in that particular office is helping us and for the common good, I think it would be beneficial to have someone as our advocate protecting our rights.

**CHAIRMAN GRAYBILL:** Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman, I rise in support of Mr. Etchart's motion to delete this. I've just looked through the Helena phone directory here, and I didn't look under any of the federal agencies, although there are a good many of those, but under the state listings there are some that I'll enumerate: Aging Commission, Employment Commission, Unemployment Insurance, Public Information Office, Child Health Service, Public Information Office under the Highway Department, Public Employees' Retirement Service, of course, Veterans' Welfare, the Welfare Department, Blind Services, Family Services, Medical Assistance, Vocational Rehabilitation. Then there are several listings under the county besides their County Welfare Office; and under the City of Helena, they have an Animal Shelter, Director of Public Service, Information and Special Services, and one more that I'll mention briefly in just a minute; that, it seems to me that out of all of these, to add another one doesn't really make very much sense. There is information available to people if they know where to find it, and if they don't, they can use the phone book. Helena also has a sewage disposal service, and maybe that's where we ought to put this proposal. (Laughter) Thank you.

**CHAIRMAN GRAYBILL:** The Convention will stand at ease for about 5 minutes while we change the tape. Please...(Inaudible).

(Recess for 5 minutes)

**CHAIRMAN GRAYBILL:** Convention will be in session.

Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, I rise in support of the majority report. I think one of the single-most things that caught the people's imagination in discussing this Constitutional Convention and in running for a position here, was the idea that the people had somewhere to go for their grievance. I think that Delegate Choate's remark is a perfect example of why we need one place. The very fact that we have such a profusion of places to go now to get an answer—I think it's called "passing-the-buck." I think the typical person of Montana would like to have one place where he could put his finger and get his answer to whatever his problem is. Whether he is ultimately satisfied with the answer or not, I think he will more than appreciate the fact that he knows where to go and where to find out.

**CHAIRMAN GRAYBILL:** Mr. Jacobsen.

**DELEGATE JACOBSEN:** Mr. President, I rise in support of the majority report. To cite an example of this, a short time ago a gentleman up in Whitefish bought a piece of land. It was—evidently came down since the time the State of Montana was making homesteads. This party tried to get a clear title through both title companies and he still doesn't have his refund of his $200 back, and this is a good case of where an ombudsman could step in and get to the land titles, or do something maybe to straighten out the Legislature. There are a lot of lands around that sometimes are clouded by state ownership or ownership that cannot be arrived at. I support it wholeheartedly.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman, I speak in opposition to Mr. Etchart's motion to delete the majority proposal. I was interested in noting that he stated that he felt that this was a good office, that possibly it should be established by the Legislature. In the journal, the Senate Journal of the last Legislative Assembly, there was such a bill introduced—Senate Bill 137. When you consult the pages enumerated you find that that bill didn't last very long in the last session of the Legislature. In fact, it was recommended do not pass by the State Administration Committee and that report was adopted and that was the end of that issue. I contend that that same thing would happen over and over again in future legislative sessions. I think it's interesting, a note that of the 14 members of our Legislative Committee, this is one area in which we had complete agreement, complete unanimity. There was not one dissenting vote.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman. (Laughter) that is not the voice of God. (Laughter) Mr. Chairman.

**CHAIRMAN GRAYBILL:** If you may speak over the top of the radio, go ahead.

**DELEGATE SCANLIN:** I rise in favor of a public advocate, but in support of Mr. Delegate Etchart's amendment. The reason being that up to this point I see that we have created more problems for the Legislature to solve than we have in relieving their problems.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, I rise in support of the majority proposal. I believe that the list of agencies that Mr. Choate read to us are a perfect example of the people who may go there and not get any information that will help them to any degree. And if there were such a person as a people's advocate who knew the ropes of government and to whom the people could turn for advice, that it would be a very worthwhile addition to our government. And I support the majority proposal.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman, I'd like to call attention to one more agency that's paid for by the federal government that is very active in the state, and that's the EOE legal service—OEO, yes. I'm on the committee at home and we have helped a great many people. We hire a lawyer. There's one in Helena, a very active office. They helped a great many of the low income and minority group people in this state who don't know where to turn or what to do, and this is one agency that has helped them out of their problems. Now, if my good friend Noel Furlong and Chet Blaylock would guarantee me if we establish this office of public advocate we could save enough money by doing away with all these other agencies so as to fund the public advocate's office, I could see some sense to it. But, I can't see too much sense to impose another agency upon the myriad of agencies that we now have. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, quite often people come to me with questions. They don't know where to go, what agency to turn to. Now, maybe I'm making a confession that the rest of you wouldn't have to make. Most often, I don't know where to turn. It's just simple little things about where to start in on job opportunities or one thing or another. One of the members of our committee had a perfect illustration. I believe it was Mr. Romney—that one of his constituents asked a question as to whether a female hair stylist could cut men's hair. She understood there was a law saying that she could not. She didn't know where to go to get that information. Mr. Romney, after many visits and letters here and there, and being knowledgeable about the fact that there is a department of cosmetology or something like that under the Board of Health, was able to get that kind of information. This kind of thing the average one of us would not be able really to track down, but there's something worse than that. Once you have a grievance against a certain bureau or agency or office in the state government, how do you get action by appealing to the agency that refuses to give you action? This allows a citizen to go somewhere with a little redress—to get a little redress in terms of his complaint. I think the committee did discuss seriously the thing that Mr. Aronow suggested, and that it might actually cut down on the proliferation of other agencies in various communities around the state and thereby save money in the total operation.

**CHAIRMAN GRAYBILL:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman, I wonder if Delegate Blaylock would yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Blaylock?

**DELEGATE BLAYLOCK:** I yield.

**DELEGATE KAMHOOT:** Chet, where would you plan this office to be? In Helena?

**DELEGATE BLAYLOCK:** Yes, I think it would most naturally be here.

**DELEGATE KAMHOOT:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** I just don't see how the people from all over the state are going to be able to run into Helena or contact the central office when they have a little problem. If they don't contact their local offices now, this doesn't seem to me to be very practical. And a little further, I note in the comments here that they recommend this be a 6-year term, that he be paid the equivalent of a district judge. Now I think a district judge gets 20,500, plus quite a substantial retirement. And I can also see with this 6-year appointment, if this turns out to be true, this could be one of the greatest whitewashes of government that we could think of. They could appoint a man to this and appoint a man that they selected. He'd be in there for 6 years and I just don't see where this would be very practical in Montana. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** I merely wanted to point out, Mr. President, in reference to Mr. Aronow's remarks about the services that the OEO performs in the State of Montana. You cannot—your total income cannot exceed $4,000 a year to apply for aid through OEO. I would submit that there are a great number of people between $4,000 a year and, say, $8,000 or $9,000 a year who cannot afford the services of an attorney and who would not qualify for help through OEO.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman, I'd like to answer the questions of Mr. Kamhoot. Of course, it's going to be up to the Legislature how to put this office into effect, but in states that use this now, what they generally have is a—well I don't know what they call it—it's a hot line going in so that there's a number that you can call collect at any time to get this information, and the number is widely circulated. I also think, in regard to your other comment, and also to Mr. McNeil's, because this is something that when we were discussing this proposal—you know, you can think of it, one proposal was to have it in the judicial department;

some suggestions have been to have it as something the Governor would set up. But, I think that really it becomes—I don't think you would get a whitewashing if it were under the Legislature because here you have a man who is named by representatives of both parties, so that he is not really beholden to either party. I also think that being under the Legislature it is most appropriate. You could almost look at it as an office similar to our legislative post-audit, where the Legislature provides the office to assure that the executive departments they set up and fund are doing an adequate job, and really being fair to the people that they represent. I think that it could be established in a number of other ways, but I think that this probably is the best way of explaining it within the separation of powers idea. In other words, they're carrying out—this office is carrying out the functions of the Legislature in assuring that the executive offices are doing the job in the way that the Legislature, I would suppose, hopes it will be done. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman, it seems to me that in addition to the things that Joe—Delegate Eskildsen—talked about, we must remember the fact that we have decided that the Legislature will have an annual session. Now, in all of the time that I've been familiar with government, the best ombudsman or the best people's advocate that I knew from our county and throughout the state were the legislators. They're going to be here an extra—every year and I'm sure they can do a pretty good job of watchdog without forming a new bureau.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** Mr. President, I just want to respond to Mr. Aronow who spoke of the OEO. For the past 15 months I've been employed with Opportunities, Incorporated, a branch of the OEO here in Montana, and I was on the same floor as the Legal Services, on the third floor in Great Falls there. And I noticed, that Legal Services, of course, was being used quite extensively, and it was a great thing for those people under the economic guidelines, you see, that Mrs. Robinson mentioned for them to have. And I think it's a fantastic thing. I'm glad it's there. The problem is, that can we always have OEO around? You know, there's a lot of indications nationally that say, including our President, you know, OEO is not going to survive, and Legal Services has been one of the most effective branches of the Office of Economic Opportunity. So, what happens when that's not around for that group of people, let alone the rest of us?

**CHAIRMAN GRAYBILL:** Mr. Belcher.

**DELEGATE BELCHER:** Mr. Chairman, there's been a lot of discussion about this people's advocate and we had a lot of discussion in our General Government Committee about the merits of it, and I don't think there's any doubt about the merits of the office. The question at hand is whether it should be locked into the Constitution or done by legislative action. And I don't feel there'd be any doubt about the legislative action if you'd turn Kyle Jackson loose with the Legislature for 1 hour.

**CHAIRMAN GRAYBILL:** Mrs. Speer.

**DELEGATE SPEER:** Mr. Chairman, I'd just like to add one word. That I think the Legislature has more work to do to legislate. They should not be taking care of what has been called by some delegates, casework.

**CHAIRMAN GRAYBILL:** Very well, I take it the proposition is on Mr. Etchart's motion to delete Section 16, subsections 1 and 2, in its entirety.

Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, I move for a roll call vote.

**CHAIRMAN GRAYBILL:** Right, we'll have a roll call vote. So many as are in favor of Mr. Etchart's motion to eliminate Section 16, please vote Aye. And so many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** If not, we'll close the vote. Will you please tally the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Absent |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |

| | |
|---|---|
| Ask | Aye |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Aye |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Aye |
| Chairman Graybill | Nay |
| Gysler | Aye |
| Habedank | Absent |
| Hanson, R.S. | Absent |
| Hanson, R. | Absent |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Absent |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Absent |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Nay |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Absent |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Excused |

**CLERK SMITH:** Mr. President. 48 voting Aye, 43 voting No.

**CHAIRMAN GRAYBILL:** 48 votes having been cast in favor of the motion, 43 No, the motion carries and Section 16, subs. 1 and 2, is eliminated from the proposal.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. I move the committee arise and report progress and beg leave to sit again.

**CHAIRMAN GRAYBILL:** Very well, the motion's been made that the Committee of the Whole rise and report progress and beg leave to sit again tomorrow. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**CHAIRMAN GRAYBILL:** So ordered.

(Out of Committee of the Whole at 4:40 p.m.)

**PRESIDENT GRAYBILL:** Convention will be in order. The clerk will read the title to the committee report.

**CLERK HANSON:** "February 22, 1972. Mr. President, we, your Committee of the Whole, having had under consideration Report Number 3 on the Committee on Legislative, recommend as follows:"

**PRESIDENT GRAYBILL:** Now, unless I hear someone from the floor request that we do otherwise, I would like to suspend reading of the report at this time. It's incomplete; takes a long time. Is there anyone that wants it read?

(No response)

**PRESIDENT GRAYBILL:** Very well, we'll suspend the rest of the reading of the Committee of the Whole's report.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move the adoption of the Committee of the Whole report.

**PRESIDENT GRAYBILL:** The Committee of the Whole's report—the adoption of the Committee of the Whole's report has been moved. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**PRESIDENT GRAYBILL:** So ordered. We're on Order of Business Number 10. Unless I hear objection, Chair would like to revert to Order of Business Number 1, Reports of Standing Committees.

(No response)

**PRESIDENT GRAYBILL:** If there is no objection, the Chair would call upon Mr. Dahood.

**DELEGATE DAHOOD:** Mr. President, we, the Committee on Bill of Rights, respectfully report as follows: That the Bill of Rights Committee proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration.

**PRESIDENT GRAYBILL:** Very well, the Bill of Rights proposal will be printed and will be referred to the Committee of the Whole. The Chair will now recognize Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I understood, according to the schedule, that my committee report's after Education.

**PRESIDENT GRAYBILL:** Well, your committee report was to come in today, that's when we moved it until, but if you're not ready, that's fine. Just say so.

**DELEGATE HELIKER:** I'm not ready.

**PRESIDENT GRAYBILL:** Very well. Are there other reports of standing committees ready? No. Reports of Select Committees, none. Communications—is there another communication, Mr. Clerk?

**CLERK HANSON:** Yes, sir. "Helena, Montana, February 22, 1972. Honorable Leo Graybill, Jr., President, Montana Constitution Convention, Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15(2), Extraordinary Senate Bill No. 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the licenses of the following lobbyists have been suspended, as of February 22, 1972, for failure to file statements of expense within the period specified by law: License Number 39-72, Gerald L. McCurdy; License Number 44-72, A. W. Scribner. Sincerely yours, Frank Murray, Secretary of State."

**PRESIDENT GRAYBILL:** Are there other communications?

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Introduction and Reference of Delegate Proposals.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Final Consideration.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Adoption of Proposed Constitution.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Motions and Resolutions. The Chair will recognize Ralph Studer.

**DELEGATE STUDER:** Mr. President.

**PRESIDENT GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** I move the following be resolved by our Constitutional Convention: "WHEREAS, it is fitting and proper that the outstanding records and accomplishments of our great Presidents, whose birthdays we recently have celebrated, be noted on record of this Constitutional Convention. We hereby express our esteem and respect to the memory of the beloved and revered George Washington and Abraham Lincoln, in the hopes their achievements in good government will guide us accordingly; in hopes their exemplary patience will guide us along the arduous paths of lawmaking; and in the hopes their commitments to the freedom of the individual will be reflected in our finished product."

**PRESIDENT GRAYBILL:** You've heard the resolution proposed by Mr. Studer. Is there any discussion on the resolution?

(No response)

**PRESIDENT GRAYBILL:** If not, all in favor of the resolution, please say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, Nay.

**DELEGATES:** (No response)

**PRESIDENT GRAYBILL:** The Ayes have it, and the resolution will be spread upon the records. Unfinished Business?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Special Orders?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Before we adjourn, I'd like to move to Order of Business Number 11, Announcements, again and just remind you that tomorrow morning, Wednesday, at 8:00 a.m., Local Government Committee picture in the Governor's reception room; 8:15, Revenue and Finance; 8:30, Education; 8:45, Natural Resources. Those four pictures tomorrow morning. Please be prompt. Furthermore, remember that the party tonight starts at 6:30 with a cocktail hour at the Montana Club.

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. President, Style and Drafting tomorrow morning at 8 o'clock.

**PRESIDENT GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Executive on adjournment.

**PRESIDENT GRAYBILL:** And I think you will recall, that Administration Committee meets tomorrow morning at 8 o'clock.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President, I move we stand adjourned until Wednesday, February 23rd, 9:00 a.m., 1972.

**PRESIDENT GRAYBILL:** The motion is to adjourn until Wednesday at 9:00 a.m. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, Nay.

**DELEGATES:** (No response)

**PRESIDENT GRAYBILL:** So ordered.

(Convention adjourned at 4:47 p.m.)

**February 23, 1972**
**9:10 a.m.**

**Thirtieth Day**

**Convention Hall**
**Helena, Montana**

**PRESIDENT GRAYBILL:** The Convention will be in order. If you'll all stand, Carl Davis will lead us in the invocation this morning.

**DELEGATE DAVIS:** Let us pray. Lord Jesus, as we pray for the members of this Convention, its officers and all those who share its labors, we remember that Thou never lost Thine inner peace, even under pressure greater than we shall ever know, but we are only human. We will grow tired, we will feel the strain of meeting deadlines, and we will chafe under frustration. We will need poise and peace of mind and only Thou can supply the deepest needs of tired bodies, jaded spirits and frayed nerves. Give us the courage not to see things as they are and ask why, but to dream of things that are not, and ask why not. Give us Thy peace and refresh us in our weariness that this may be a good day, with much done and done well, that we may say with Thy servant, Paul, "I can do all things through Christ, who gives me strength." Amen

**PRESIDENT GRAYBILL:** We will take the roll today by voting Aye on the voting machines.

**CLERK SMITH:** Delegate Aasheim, Delegate Anderson, Delegate Burkhardt, Delegate Cain, Delegate Graybill—oh, excuse me—Delegate Holland, Delegate Kamhoot, Delegate Schiltz. Delegate Holland.

**PRESIDENT GRAYBILL:** Very well, do you want to take the vote?

| | |
|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Present |
| Aronow | Present |
| Artz | Present |
| Ask | Present |
| Babcock | Present |
| Barnard | Present |
| Bates | Present |
| Belcher | Present |
| Berg | Present |
| Berthelson | Present |
| Blaylock | Present |
| Blend | Present |
| Bowman | Present |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Present |
| Cate | Present |
| Champoux | Present |
| Choate | Present |
| Conover | Present |
| Cross | Present |
| Dahood | Present |
| Davis | Present |
| Delaney | Present |
| Driscoll | Present |
| Drum | Present |
| Eck | Present |
| Erdmann | Present |
| Eskildsen | Present |
| Etchart | Present |
| Felt | Present |
| Foster | Present |
| Furlong | Present |
| Garlington | Present |
| Gysler | Present |
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Present |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| Harrington | Present |
| Heliker | Present |
| Holland | Absent |
| Jacobsen | Present |
| James | Present |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Present |
| Leuthold | Present |
| Loendorf | Present |
| Lorello | Present |
| Mahoney | Present |
| Mansfield | Present |
| Martin | Present |
| McCarvel | Present |
| McDonough | Present |
| McKeon | Present |
| McNeil | Present |
| Melvin | Present |
| Monroe | Present |
| Murray | Present |
| Noble | Present |

| | |
|---|---|
| Nutting | Present |
| Payne | Present |
| Pemberton | Present |
| Rebal | Present |
| Reichert | Present |
| Robinson | Present |
| Roeder | Present |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Present |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Present |
| Swanberg | Present |
| Toole | Present |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Present |
| Ward | Present |
| Warden | Present |
| Wilson | Present |
| Woodmansey | Present |
| Mr President | Present |

**CLERK SMITH:** Mr. President, 99 present, 1 absent.

**PRESIDENT GRAYBILL:** Very well. Who's absent?

**CLERK SMITH:** Delegate Holland.

**PRESIDENT GRAYBILL:** Holland? All right, Order of Business Number 1, Reports of Standing Committees.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** Yes, there are some, sir. Education Committee, Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. President, fellow delegates, we the Committee on Education—

**PRESIDENT GRAYBILL:** Just a moment. Will you turn on Mr. Champoux's light? Thank you.

**DELEGATE CHAMPOUX:** Mr. President, fellow delegates, we, the Committee on Education and Public Lands respectfully report as follows: That the Education and Public Lands Committee majority proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration; and that the Education and Public Lands Committee minority proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration.

**PRESIDENT GRAYBILL:** Very well, the Education report is filed and will be sent to printing and will be put on General Orders. Next, the Chair would call on Mr. Heliker.

**DELEGATE HELIKER:** Mr. President, fellow students, we, the Committee on Public Health, Welfare, Labor and Industry respectfully report as follows: That the Public Health, Welfare, Labor and Industry Committee majority proposals are ready to be duplicated and submitted to the Committee of the Whole for consideration; and that the Public Health, Welfare, Labor and Industry Committee minority proposals are ready to be duplicated and submitted to the Committee of the Whole for consideration.

**PRESIDENT GRAYBILL:** Very well, the Public Health, Welfare, Labor and Industry Committee report is filed and will be sent to printing—or has been sent to printing and put upon your desks and it will be placed on General Orders. Chair will now recognize Mr. Oscar Anderson.

**DELEGATE OSCAR ANDERSON:** Mr. President, we, the Committee on Local Government, respectfully report as follows: That the Local Government Committee proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration. Thank you.

**PRESIDENT GRAYBILL:** Very well, the Local Government Committee report is filed, will be printed, placed upon your desks and is now placed upon General Orders. Now, Reports of Select Committees.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** Communications.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** This is not a communication, but I would like to inform the body that we did work with the janitorial staff yesterday and we've changed the thermostats, and we've put new wafers in the radiators to keep them from leaking, and we've lowered the temperature of the air that's being blown in in the galleries, and we hope to keep things a little cooler. Now, it may take a little while to work that out and if the windows need to be opened, we'll open them. And if the persons sitting on the floor, but not delegates, don't like the windows open, they'll have to move. Okay. Order of Business Number 4, Introduction.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 5, Final Consideration.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** Number 6, Adoption of Proposed Constitution.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 7, Motions and Resolutions—I think there are none. Order of Business Number 8, Unfinished Business. Mr. Champoux, would you introduce the pages this morning.

**DELEGATE CHAMPOUX:** Mr. President, fellow delegates, it is my pleasure this morning to introduce the pages, wherever they're at. (Laughter) They're supposed to be up the front at this point.

**PRESIDENT GRAYBILL:** Have a call—have call of the house for the pages.

**DELEGATE CHAMPOUX:** Could we have all the pages up front, please? The pages for this week are Carl Ammons, Missoula; Michele Brown, Helena—

**PRESIDENT GRAYBILL:** Wait a minute now, Rick, we've got to know who they are, so where is Carl? Is he here? Okay, there's Carl.

**DELEGATE CHAMPOUX:** Michele Brown, I believe, was just sent to printing—of Helena; Sarah Gackle of Rapelje; Tom Glover—Rapelje, I'm sorry—; Tom Glover of Kalispell; David Kelleher of Billings, who is the son of that famous Shakespearean actor, Robert Kelleher, over there—(Laughter) Andrea Easter of Missoula; Carina McQuillan of Helena; and Joe Rattler of Browning. David Kelleher will make the response.

**MR. DAVID KELLEHER:** Mr. President and delegates, I have been chosen to represent the pages today because I also deal with the majority of representation in the delegates. And I am a lawyer's son. (Laughter) I'm going to find it very difficult to speak here today because I was at the little party last night and I heard Mr. Dahood speak. And I find it very difficult to follow anything as gracious as that. (Laughter) We are all very proud to have been chosen to serve before you and with you and we hope that you can write a long-standing Constitution that will work with us when we grow up. The pages—and I'm sure I speak for all of us—have, I'm sure we feel, have a hard time realizing that we're still servants. We would like to press the Aye and the Nay buttons and get up and give the speeches, and I thank you.

(Applause)

**PRESIDENT GRAYBILL:** Well, we want to thank all of you pages and hope that you'll have a good week with us. I'm sorry that our planning slipped up and you were allowed to watch Mr. Dahood perform last night, because that's liable to change your outlook.

(Laughter)

**PRESIDENT GRAYBILL:** But, anyway, we're glad to have you and thank you very much. Your names will be spread upon the record and you will be given a copy of today's proceedings to take home with you. Order of Business Number 9, Special Orders.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 10, General Orders of the Day.

**CLERK HANSON:** February 23, 1972. The following committee proposals are now on General Orders: Legislative, Executive, Judicial, Natural Resources, Revenue and Finance, Bill of Rights, Education, Public Health and Local Government.

**PRESIDENT GRAYBILL:** Very well. Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President, I move we resolve ourselves into Committee of the Whole for the purpose of handling business under General Orders.

**PRESIDENT GRAYBILL:** Very well, all those in favor of moving this Convention into Committee of the Whole, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**PRESIDENT GRAYBILL:** So ordered.

(Convention resolved into Committee of the Whole with Delegate Graybill as Chairman.)

**CHAIRMAN GRAYBILL:** Now, before we start this morning, I think it might be helpful if we all saw where we are, and on the status board up here we have printed where we are, but some of you might not be able to see it. We'll start out with Section 15 of the Legislative Article, which was postponed until this morning. When we've completed that, we'll go to Section 7, which was also passed. Then, that line in there indicates that something else has to be put in there after Section 7. After that, we will go to the bicameral proposals on page 32, I believe it is, which are duplicated—which duplicate proposals 4 through 16 of the unicameral proposal. That shouldn't be too difficult since it'll be merely a matter of noting where they're the same and amending them to be the same, with a couple of exceptions. After that, we will go back to Sections 1 to 3, which we passed, which is the point at which we'll debate unicameral-bicameral, and on the unicameral proposal under Number 1, we will have the minority report on parliamentary form. After we have finished that, we will put in—there are four new sections that people have put in proposals on that we will consider, and after we have considered that, there are, I understand, motions to reconsider on Section 4 and Section 16. Now, that's all we have to do this morning. Mr. Habedank, for what purpose do you rise?

**DELEGATE HABEDANK:** I rise to secure some information. I have a addition, which would be Section 17, following Section 16, which apparently was stricken, and I just wanted to know where that would come up.

**CHAIRMAN GRAYBILL:** Well, I thought we'd put that under the four new sections.

**DELEGATE HABEDANK:** Very well.

**CHAIRMAN GRAYBILL:** All right. Mr. Aasheim, I understand we have a new Section 15.

**DELEGATE AASHEIM:** Mr. President, and members of the assembly, you now have before you two new proposals—they're not new entirely—but I wish now you would look on majority proposal Section 15, based on Pennsylvania. It's got the three holes punched in your sheets. Now, there is no basic change from what you have on page 28 and 29. There is some clarification—or there are some clarifications made and I want to go through them with you, and after that I'm going to move that they be adopted. On Section 2 you'll note that "immediately upon enactment of this section" has been stricken and inserted is, "in the legislative session following ratification of this Constitution," has been inserted. Then, if you go to line 18 of your book, on page 28, the prefixes, "re—" and "re—", have been stricken. That's a matter—it would be okay to leave it as it is, but it isn't proper to say "redistricting" because there might not be any "redoing"; it might remain as it is. On line 20 in your book, on page 28, there is included on—this will be on line 8 of the sheet I gave you, it says in parenthesis, "bicameral: the majority and minority leaders of each house shall designate a commissioner." That's because of the fact that we have the two proposals. We've got to clarify for the two potential bodies that we shall have. That is the sum and substance of the changes in subsection 2. Now, in subsection 3, this is something where we have had to do a little arbitrating. I always did think that 90 days was too long, and I still think 90 days—or, 45 days is too long. But this is a matter of compromise so we put in 45 days after the appointment of a Chairman. In line 26, subsection 3, "No later than 45 days after the appointment of a chairman". And then after "or", on line 27 in your book, "No later than 45 days following the official reporting of each federal census, whichever is later in time, the commission shall"—on page 29, again—"file a preliminary"—"preliminary plans" on line 29. Because there are two plans, really—the congressional districting and the legislative districting, so we had to refine our wording to say "plans" instead of "plan" because the congressional district also has to be done. And, then, after "preliminary", we strike "with the secretary of state" and add, "for legislative and congressional districts with the secretary of state." You'll find that wording on 19 of the sheet you received. On 4, subsection 4, in the book, "plans" instead of "plan", and on line 1 on page 29, we have stricken "which case" and added a period after "commission", so "the commission shall"—after "commission" put in "shall"—"have 30 days after the date—" insert "shall" in place of "should". And on line 3 in your book, after "file", put in "to consider", and strike "prepare". And "file"—after "file, any revisions to the preliminary plans". And you'll find that on page 23 of the sheet I gave you. Then, at the end of line 6, "for the next ensuing legislative and congressional elections." And that's all on Section 4. Section 5 is pretty much as it was and Section 6—just a matter of rewording. You'll find that in the sheets that you have—that have been given to you. Now, I hope this hasn't confused you too much. Basically, the plan is this again—and let me say—no matter which plan you adopt, it isn't going to be accepted by the Legislature or the people without a lot of criticism. There is no perfect plan, but both of these have been tried and used and have found workable. This Pennsylvania plan, as I said yesterday, is quite restrictive. It says the commission shall be appointed by the leaders of the Legislature and they shall select another man. Now, someone asked a question this morning that kind of—I wonder if you're a little bit confused. We have already voted single member districts and this commission is going to draw up these districts. I hope this is clear that this commission—and that's a powerful commission—they're going to draw up these districts because we have felt it has proved that the Legislature cannot do it. So, this plan is quite restrictive. However, after this commission has drawn up a plan they have 30 days—the Legislature has 30 days to file complaints as individuals. They can file complaints and they can go talk to the commission and say, "This is not right." And I feel that the legislators are in a better position to explain what problems there are in their particular area. Then, after that 30-day period—and anybody can file a complaint, any citizen can file a complaint with the court. And that, in substance is this Pennsylvania plan. I'm sorry for the corrections but with this unicameral thing coming in, we had to make corrections. But you'll have the corrections pretty much as you have on—as it should be—and I move adoption of these corrections, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Will the Clerk read—let's start by reading subsection 2, Mr. Aasheim, and then we'll go through. Clerk read subsection 2.

**CLERK HANSON:** "Subsection 2: In the legislative session following ratification of this Constitution and in the session preceding each census made by the authority of the United States, a committee of four citizens, none of whom may be public officials, shall be designated to draft plans for districting and apportioning the state into legislative and congressional districts. The majority and minority leaders of the legislature shall each designate two commissioners, parenthesis, Bicameral: the majority and minority leaders of each house shall designate a commissioner, end of parenthesis. The four commissioners, within 20 days after their designation, shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall appoint the chairman." Mr. Chairman, subsection 2.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman, I move this committee does arise and report, after having had under consideration subsection 2 of Section 15, the same be adopted. Mr. Chairman, I will not add any more comments.

**CHAIRMAN GRAYBILL:** Very well. Is there discussion?

Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman, as a substitute motion, I move the adoption of the minority committee report, which I think all of you have on your desks. The basic difference between the minority report and the majority report is that the minority report feels that anyone with an elementary knowledge of arithmetic and a set of statistics can reapportion the state, but it should be done on a sociological and ecological basis that you should be able to—and where can you arrive at a committee which would be more cognizant of the problems involved in each district than the Legislature? For that reason, the Section 1 is essentially the same—or, Section 2, excuse me, of the minority report is essentially the same as Section 2 of the majority report. In Section 3 it varies in that the commission is set up; it presents a plan to the Legislature. The Legislature has 30 days in which they can either accept the plan or come up with a plan of their own. If they do not come up with a plan, then the commission's plan shall be—shall become law and the final plan of the commission shall become law. What we're doing here is giving the Legislature an opportunity to come up with a plan. That I feel would be a good idea to have them as a committee who knows the problems all over the state, to have the first opportunity. If they cannot come up with a plan, such as some people think they can't, then the commission would be available and they would draw up the plan. The Section 4 and 5 of the minority report merely give the Supreme Court the original jurisdiction, and they in no way change the fact that it could still be taken to federal court. I think that's basically the difference between the two plans, and I've already moved for adoption of the minority plan.

**CHAIRMAN GRAYBILL:** Mr. Nutting, the Chair is confused. Is Plan 2, yesterday, the minority report?

**DELEGATE NUTTING:** No, I don't know whether the Chair got a copy. I had them distributed by the pages, but—

**CHAIRMAN GRAYBILL:** All right, well, the Chair didn't get a copy. There might be one on desk 42 there. You've got two? Fine.

**DELEGATE NUTTING:** It has a number 2 on the top of it and it says, "based on the Maryland section," is what—the revised minority proposal for Section 15, based on the Maryland section.

**CHAIRMAN GRAYBILL:** All right, Mr. Nutting, I have one more question. Where it says Section 15, is that supposed to have a small 2 there? You don't have a 2 or a 1. You start with—you follow me?

**DELEGATE NUTTING:** Yes, that would be a small 2 there.

**CHAIRMAN GRAYBILL:** Small 2. Mr. Aasheim and Mr. Nutting, are we going to debate section by section or proposal by proposal? Should we read the rest of the majority proposal and then the rest of the minority proposal? Is it more logical to put the whole proposal in, one way or the other? Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. President, I would recommend that you go ahead now with this minority proposal and let's analyze it.

**CHAIRMAN GRAYBILL:** In other words, 2, 3, 4 and 5. All right, I think we'd best have the clerk read the minority proposal in its entirety so that we have a chance to digest it.

**CLERK HANSON:** "Minority proposal for Section 15, based on Maryland section. Section 15, subsection 2: In the legislative session following ratification of this Constitution and in the session preceding each census made by the authority of the United States, a redistricting commission shall be established. The majority and minority leaders of the legislature shall each designate two commissioners. Parenthesis, Bicameral: The majority and minority leaders of each house shall designate a commissioner, end parenthesis. The four commissioners, within 10 days after the designation, shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall appoint the chairman. Subsection 3: The commission on legislative redistricting shall by the first day of the regular session in the year in which redistricting is to be effective, submit a plan to the legislature. If the legislature approves the plan it shall become law. If the legislature does not approve the plan within 30 days, or submit a plan of its own, the commission plan shall be sent back to the commission with recommendations of the legislature. The commission shall consider the recommendations and its final plan shall become law. Subsection 4: The supreme court shall have original jurisidiction, upon petition of any qualified voters to review the commission plan and the legislative plan. If the supreme court finds a redistricting plan enacted by the legislature invalid, the commission plan shall become law. If the supreme court finds the commission plan invalid, the supreme court shall issue an order remanding the plan to the commission directing the commission to redistrict in a manner not inconsistent with its order. When a plan becomes final, the commission shall be dissolved. Subsection 5: The state shall be divided into congressional districts for the election of members of the United States House of Representatives. These districts shall be redrawn after each federal decennial census. The commission by redistricting shall submit a congressional redistricting plan to the legislature by the fifth day of the regular session in the year in which the congressional redistricting is to be effective. The legislature shall enact either the commission plan or the congressional redistricting plan of its own." Mr. Chairman, the minority proposal for Section 15.

**CHAIRMAN GRAYBILL:** All right. Now I think before we can understand this intelligently we've got to know the other parts of the majority proposal, so would you read Sections 3, 4, 5 and 6 of that.

**CLERK HANSON:** "Majority proposal, subsection 3: No later than 45 days after appointment of the chairman, or no later than 45 days following the official reporting of each federal census, whichever is later in time, the commission shall file preliminary plans for legislative and congressional districts with the secretary of state. Subsection 4: Any person aggrieved by the preliminary plans shall have 30 days to file exceptions with the commission. The commission shall have 30 days after the date the exceptions were filed to consider and file any revisions to the preliminary plans. If no exceptions are filed within 30 days, or if filed and acted upon, the commission's plan shall be final and have the force of law for the next ensuing legislative and congressional election. Subsection 5: Any aggrieved person may file an appeal from commission plan directly to the Supreme Court within 30 days after the filing. If the appellant establishes that the final plans are contrary to law, the Supreme Court shall issue an order remanding the plans to the commission and directing the commission to district and apportion in a manner not inconsistent with it's order. Subsection 6: When the Supreme Court has finally decided an appeal taken, the apportionment plan, as approved by court, shall be used thereafter in elections to the legislature and to the congress until the next apportionment is required." Mr. Chairman, majority proposal for Section 15.

**CHAIRMAN GRAYBILL:** All right, before we debate this, if I understand it correctly, the majority proposal allows the commission to make the plan and file its plan and then people can file exceptions; but the commission rules on those exceptions, and revises the plan if it wishes to, subject to an appeal of the Supreme Court. The minority report, however, provides that the commission provides a plan and submits it to the Legislature, and the Legislature can approve it. If it doesn't approve it, it can submit a plan of its own; but in any event, the commission then has to look at that plan and the commission gets the right to make the final plan unless the Legislature approves the commission's plan. And, again, there's Supreme Court review. Now, have I fairly stated the difference, Mr. Nutting and Mr. Aasheim?

Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman, maybe I misunderstood you that the commission presents a plan to the Legislature. The Legislature can either accept that plan or draw a plan of its own. If it does draw up a plan of its own, then that plan is the one that goes into effect unless it is found to be unconstitutional. And if it is, then the commission plan would come into effect, but in effect it puts the legislative plan ahead of the commission plan.

**CHAIRMAN GRAYBILL:** In other words, the Legislature can make a different plan and can adopt it and then it becomes the plan unless the Supreme Court overturns it.

**DELEGATE NUTTING:** That is correct.

**CHAIRMAN GRAYBILL:** All right, so the major difference then is whether the plan is to be—whether the Legislature is to be given a hand in making the plan, or whether the Legislature is not and it's going to be done by the commission. I think that's the basic difference. Now, let's discuss that, if we have further discussion.

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, just before that explanation was made, I was having an awful lot of trouble in reading this in determining that that was what their intent was, and I submit that if that is their intent, they'd better say it much better than it's said in there right now because when it gets to Style and Drafting, we're going to sit around and quibble and have to come back and ask Mr. Nutting just exactly what his intent was. I can't find it in there.

**CHAIRMAN GRAYBILL:** On line 16 of the minority report it says that the commission shall submit a plan to the Legislature. If the Legislature approves the plan it shall become law. If the Legislature does not approve the plan within 30 days, or submit a plan of its own, the commission plan shall be sent back to the commission with recommendations of the Legislature. So if they submit a plan of its own, I take it that ends the matter. I agree with you, Mr. Schiltz, it's not very clear. But if they submit a plan of its own, that ends the matter. Otherwise, the commission plan goes back to the commission with the recommendations of the Legislature, and then the commission can consider the recommendations and make its final plan. Now, that's the minority idea and the majority idea is the other way.

Mr. Aasheim.

**DELEGATE AASHEIM:** —Chairman, I believe I had the same impression that Mr. Schiltz had, that it wasn't clear but I think it is. If you look at the last sentence it says, "The commission shall consider the recommendations and its final plan shall become law." So I think that leaves it up to the commission, very definitely.

**CHAIRMAN GRAYBILL:** Well, it doesn't leave it up to the commission if the Legislature approves a plan of its own or—on line 19, or submit a plan of its own. Well, I think you're right. I think they're right, Mr. Nutting. When they say, "submit a plan of its own", does that mean submit it to the commission?

**DELEGATE NUTTING:** Mr. Chairman, I would move to amend so that that sentence would read: "If the legislature does not approve the plan within 30 days, or submit a plan of its own which shall become law, the commission plan shall be sent back to the commission with recommendations of the legislature." Would that make it more clear? Could I ask Mr. Schiltz a question, please?

**DELEGATE SCHILTZ:** I would still have some difficulty with it because then you make the words, "The commission shall consider the recommendations and its final plan shall become law." You make that phrase totally meaningless then because if the Legislature's plan becomes law previous to that, why send anything to a commission that's going to consider the recommendations. They aren't recommendations. It's already law. And then you say "its final plan shall become law", and I have a conflict between which final plan is going to become law.

**CHAIRMAN GRAYBILL:** Mr. Nutting, if you'll add the words after your sentence, "which shall become law"—if you'll say, "if not, the commission plan shall be sent back." So just add the words, "if not". Now I think we've got it clear. If not—that is, if it doesn't become law, the commission plan shall be sent back to the commission with recommendations of the Legislature. I think that at least gives the Style and Drafting something to work from, substantively. On line 19, the proposal by Mr. Nutting is to amend it by adding, after the words, "or submit a plan of its own", this phrase: "which shall become law." And if you add right there, "if not, the commission plan shall be sent back to the commission." Then I think you're in good shape to at least go to Style and Drafting. Mr. Nutting, would you accept that proposed amendment?

**DELEGATE NUTTING:** I would.

**CHAIRMAN GRAYBILL:** All right, we'll accept that amendment so that we can discuss the minority report intelligently.

Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President, I'm concerned with that language now as you have suggested it. If you do this, and this has to go to the Supreme Court to determine whether or not it becomes law, then by that time certainly the Legislature is going to have adjourned and went home. So, unless they do two things at once, unless they send their own plan and put it in the route through whatever legal procedures it may have to go and then also make recommendations to the commission plan and send it back to the commission while they're still in session, it seems to me that you'd have a problem.

**CHAIRMAN GRAYBILL:** Well, Mr.Hanson, I don't wish to argue the minority report but if you turn to the next page, the top line, if the Supreme Court holds the plan wrong then it directs the commission how to correct it. So in that case, I guess it's the Supreme Court that makes the plan, in effect.

Mr. Skari.

**DELEGATE SKARI:** Mr. President, I think there's an inconsistency here and I think it's possibly on both proposals. It's a very minor matter. I believe it was the sense of the committee—the entire Legislative Committee—that reapportioning be done only every 10 years unless the federal Supreme Court mandated it oftener than this. On line 3 of the minority proposal, I propose to amend it as follows: following the word "each", I would substitute, "federal decennial", between the words "each", and the word "census" and then I would cross out the words, "made by the authority of the United States." This, then, would be consistent with line 7 on the other side where it says on congressional districts: "These districts shall be redrawn after each federal decennial census." I think the committee felt that reapportioning was necessary approximately every 10 years after the federal decennial census. There is a possibility that the federal census may go to every 5 years. This is a distinct possibility now. With this wording we would have to reapportion every 5 years and just about the time people became accustomed to boundary lines, legislative boundary lines, they would evaporate again. I don't think the committee intended this. I move—

**CHAIRMAN GRAYBILL:** All right, Mr—

**DELEGATE SKARI:** (Inaudible)...excuse me

**CHAIRMAN GRAYBILL:** Pardon me. I was going to ask Mr. Nutting—I want to make it possible to debate this easily and so I'm going to allow these amendments, but I want Mr. Nutting to know—to answer to that. What do you think of that, Mr. Nutting?

**DELEGATE NUTTING:** That would be a satisfactory amendment as far as the minority is concerned.

**CHAIRMAN GRAYBILL:** All right, on line 3 of the minority report, then, the words—it should read, "preceding each"—then put in your caret—"federal decennial"—then back to "census"—and strike out the words, "made by the authority of the United States." All right.

Mr. Aasheim.

**DELEGATE AASHEIM:** (Inaudible).... the same for the majority report.

**CHAIRMAN GRAYBILL:** All right, we'll make the same amendment in the majority report. It's on line 2—"preceding each federal decennial census"—and strike out the words, "made by the authority of the United States." Now we have both the majority and the minority report the same in that effect. Is there—

Mr. Arbanas.

**DELEGATE ARBANAS:** I wonder if Delegate Nutting would yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Nutting?

**DELEGATE ARBANAS:** I notice in paragraph 4 in both the minority and majority report where it said "the Supreme Court stage of review", that the majority report has a time limit for that process, whereas the minority report doesn't. Is that an oversight or is there no need for it there?

**DELEGATE NUTTING:** We feel there really is no need because you are always subject to court review on these matters, so a time limit wouldn't really have any effect on the courts.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** But isn't it true that if the Supreme Court sort of let the matter sit that you might never know what happened to it, if there's no first decision is to be reached by the Supreme Court, you know, approving the plan or disapproving the plan?

**DELEGATE NUTTING:** I fail to see on the majority report that there is a time limit as far as the—there is a time limit on the time an aggrieved person may file an appeal, but there is no limit on how long it takes the court to decide.

**CHAIRMAN GRAYBILL:** Are you through, Mr. Arbanas?

**DELEGATE ARBANAS:** Well, maybe if Delegate Nutting would yield to another question—

**CHAIRMAN GRAYBILL:** One more question?

**DELEGATE NUTTING:** (No audible response)

**DELEGATE ARBANAS:** I still kind of feel that isn't there a—just trying to understand it—a time there when their appeal should be heard before action is taken? I mean, I don't get that feeling that there's room in your plan for that to take place. Somehow or other, while there may be appeals at any time, somebody has to wait a certain amount of time before they enact the law, don't they?

**DELEGATE NUTTING:** We're operating on two different principles in the two reports. In the majority report there is a provision for citizens to appeal the decision of the commission. The decision of the commission in the majority report—or the minority report, excuse me, there is no appeal provision as such. The only appeal would be through the courts to either the legislative plan or the commission plan, whichever is accepted in Section 2. So, consequently, there really is a different process here. There is no limit to the amount of time in either plan that an aggrieved person would have to go to court. You have that right.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, I am happy to announce that Plan 3, the workable, realistic, acceptable and best planned to replace all other plans, is back. Several things disturb me about the other two plans. First of all, I think that it's important that we allow the Legislature to have some part in this procedure so that the gerrymandering, which we all fear and all legislators fear, will not take place. And you have on your desk, distributed this morning, a proposed amendment dated February 23rd, 1972. The first paragraph of that should be stricken and the following language inserted in lieu thereof: "Immediately upon enactment of this section and following each census made by the authority of the United States, a committee of citizens, none of whom may be public officials, shall be designated to draft a plan for redistricting and reapportioning the state into legislative and congressional districts. The Legislature shall designate the membership of the commission which shall be balanced geographically and politically." Then the second paragraph would be the same as that on the proposal that's on your desk. Now, the first sentence says "after each census made by the authority of the United States." There has been some talk about the federal census going to a 5-year census. I feel to designate every decennial census, every 10-year census, would result in a law suit being filed after every federal census. If the federal census is every 5 years, that's when we ought to reapportion because if we don't reapportion and there's any significant difference in districts, somebody's going to bring a lawsuit. So I think we ought to face that, that we ought to reapportion after every federal census whether it's 5 years or 10 years. Secondly, this gives the Legislature, in the last paragraph, or last sentence of the first paragraph, it gives the Legislature the right to set up the membership of this committee, and it directs them to do it on a geographical and political basis, balanced geographically and politically. That kind of takes one of the problems off our back. And I had a phone call this morning from a couple legislators who were concerned about this proposition of the majority leaders appointing the membership on this commission, and this was a suggestion of theirs. So, take that for what it's worth. But, I think that it does give the Legislature a means of directing this commission. Then the last paragraph, I made some changes in the language there to clear up Jack Schiltz's problem with it, putting "first" in, instead of the word, "next". And under this, the commission would submit to the Legislature a plan for its consideration and recommendation. The Legislature would then return it to the commission with its recommendations and it would be filed with the Secretary of State. And then it provides that after enactment of a valid plan the commission shall be dissolved, so that it isn't a commission that's existing for the full 10-year period. I've taken out the provisions relating to citizens' right of appeal because a citizen has that right anyhow. I don't think we have to set it forth in the Constitution. It's already in the Bill of Rights. And I've taken out the provision with regards to review by the Supreme Court because the citizen has a right to have it reviewed by the Supreme Court anyhow, and it's redundant to put that into a Constitutional article. And, secondly, in any event, these reapportionment problems are going to end up in federal court in any event, and there's nothing we can do about that. So with that explanation, I would move that Plan 3, that Section 15, subsection 2 through and including 6, page 28 and 29 of the Legislative Committee proposal be amended by deleting those subsections and inserting in lieu thereof the language which I have read to you.

**CHAIRMAN GRAYBILL:** Mr. Cate, very well, we'll accept it—I think we'll have to accept it as an amendment to Mr. Nutting's substitute because the substitute came in first.

**DELEGATE CATE:** That's fine. Thank you.

**CHAIRMAN GRAYBILL:** But we'll amend it—accept it as a substitute amendment, striking out everything after the Section 15 and putting yours in the place of it in the minority report. Now, may I ask a question of you? I have your new proposal here before me. Do the members of the body have it or do they only have yesterday's?

**DELEGATE CATE:** They only have yesterday's. They do not have that first paragraph.

**CHAIRMAN GRAYBILL:** All right then, I think that the first thing we should do is have the clerk read Mr. Cate's proposal in its entirety again.

**CLERK HANSON:** "Subsection 2: Immediately upon enactment of this section and following each census made by the authority of the United States, a committee of citizens, none of whom may be public officials, shall be designated to draft a plan for redistricting and reapportioning the state into legislative and congressional districts. The legislature shall designate the membership of the commission which shall be balanced geographically and politically. The commission shall draw up a plan for reapportioning and redistricting legislative and congressional districts and submit this plan to the legislature at the first session after the decennial census figures are available. Within 30 days after the submission to it, the legislature shall return the plan to the commission with its recommendations for change and the commission shall within 30 days thereafter file with the secretary of state its final plan and the same shall become law. After enactment of a valid plan this commission shall be dissolved until the next decennial census."

**CHAIRMAN GRAYBILL:** Very well, so that the body may understand, it appears to the Chair that there are two major differences between Mr. Cate's proposal and the others. One is that the commission, on which the other—the majority and the minority are fairly much in agreement, the commission under Mr. Cate's proposal would be a committee of citizens which shall be balanced geographically and politically and be appointed by the Legislature. Secondly, it provides that the commission plan goes to the Legislature and the Legislature may recommend to the commission, but that's all. And then the commission plan becomes final. Is that correct, Mr. Cate?

**DELEGATE CATE:** That is correct, Mr. Chairman, with one additional item. The words, "decennial", in the fourth sentence and in the fourth line—

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE CATE:** —of the second paragraph and the last line should be stricken out.

**CHAIRMAN GRAYBILL:** All right. Now, so that we all understand each other, the majority report involves a commission appointed by the majority and minority leaders of the Legislature, whether there are one or two houses; and the minority report provides for the same thing. The majority report provides for reapportionment by commission; the minority report provides for reapportionment by a commission but the Legislature may override and put it's own plan into effect if it wants to. And Mr. Cate's provides for reapportionment by a commission and the Legislature may recommend only. So, it's a commission, commission plus Legislature, or commission plus legislative recommendation only. That's the three choices.

Mr. Drum.

**DELEGATE DRUM:** Mr. Chairman, would Mr. Aasheim yield for a question, please?

**CHAIRMAN GRAYBILL:** Mr. Aasheim?

**DELEGATE AASHEIM:** I will.

**DELEGATE DRUM:** Mr. Aasheim, I wonder in your committee deliberations on this topic, did you consider a method of compensating the commission or funding the cost of the commission? Did that come up, or not?

**DELEGATE AASHEIM:** We did not discuss that. But that would be up to the Legislature and in our plan we have no proposal or suggestion for discontinue it. I have an idea the Legislature will say, "You have this much money," and that'll be it, and that might be very niggardly.

**CHAIRMAN GRAYBILL:** Mr. Drum.

**DELEGATE DRUM:** I don't care to make an amendment but I would think that one of the problems of all three of these proposals is that if the Legislature does not care to fund the thing, if there is no fiscal note on it so we have an idea of what the cost is going to be, that it could certainly change the complexion of the commission. There's going to have to be some professional staff or some help there in making these evaluations, and I would think that a one-line amendment, maybe Section 6, that it will be funded by the Legislature or something of that nature, may be in order. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Drum, the Chair is going to try now to get the body to rule on which of these three ways they want to go. Once we've done that, then I think you may have a point that some other amendment should be made and whichever way we go, depending on what you want to do.

Mr. Garlington.

**DELEGATE GARLINGTON:** (Inaudible)...just want to say, Mr. Chairman, that I withdraw the amendment that I proposed yesterday because I think that Mr. Cate's plan here really is the simple,workable, flexible kind of thing that we ought to put in the Constitution, and I am very happy with it.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** (Inaudible)...I would like to know if Mr. Nutting would agree to an amendment on line 19 and striking the word "30 days", and put in the word "60 days"?

**CHAIRMAN GRAYBILL:** Mr. Nutting?

**DELEGATE NUTTING:** Mr. Chairman. I would not object, Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President, I would then submit to strike out in line 19 of the minority proposal and insert in lieu the words, "60 days", instead of "30 days".

**CHAIRMAN GRAYBILL:** The mover having agreed, we will do that, so it now reads "60 days".

**DELEGATE MAHONEY:** Mr. President, the reason for this is that I think the Legislature—and it looks like for sure we're going to have at least a 60-day Legislative Session after a decennial census—it may be 90. And I'd like to give them that much time to decide whether they wanted to apportion themselves or not. And while I have the floor, Mr. Chairman, I wish to apologize to the body that I caused so much trouble. I think I have about 40 words in my amendment that I submitted here yesterday, and we get a page and a half. I wonder if we couldn't get this down simpler and a little shorter in the Constitution—then all we're trying to put in here to try and apportion the Legislature where we got by beautifully before without anything in the Constitution. And I'd like to answer Mr. Aasheim when he stated the Legislature won't do it. The Legislature did do it last session of the Legislature. It did apportion itself and it has stood the first court test.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I suppose it's improper for the majority to start amending the minority, but I would say 60 days is more than they need to draw up a reapportionment plan. It'll just be 30 days more than they need because the commission will have presented them with a plan and it certainly shouldn't take 60 days of haggling to decide whether or not to accept it. And I resist the motion to amend this "30" to "60". I'm resisting because it's very possible the minority plan might be adopted and put in that light, I am resisting this amendment.

**CHAIRMAN GRAYBILL:** Well, Mr. Aasheim, the Chair has ruled that if Mr. Nutting wants to get his in good form, he would allow the amendment, so the amendment's allowed. Now you can vote against it but, unless you want to challenge us, I don't see why we should put these minor little things to the floor. That's the way the minority now wants it. Is that all right to leave it that way? You certainly may speak against it.

**DELEGATE AASHEIM:** Well, I move that it remain as it is, at 30 days.

**CHAIRMAN GRAYBILL:** All right, Mr. Nutting, an objection having come from the floor to the amendment of your minority from "30" to "60", and there already being more amendments before the body than the Chair will accept, we'll have to decide first and you can amend later if you want to. So the amendment will have to be withdrawn, Mr. Nutting. We've got a substitute and a couple of amendments here, so I think we'll just limit it to that until we've decided. Now, once we've decided on which plan we're going, you may then discuss it and amend it again if you want to.

Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I rise in support of the minority report Number 2, the Maryland section, and which of course means in opposition to Number 1 and 3. The fundamental issue is whether we're going to have our apportionment and districting accomplished by the elected representatives of the people or by an appointive commission, and I submit to you that it is fundamentally wrong to take away from the elected representatives the right to apportion and district. This is one of the crucial elements in our form of democracy. It ought to be accomplished by the elected representatives and not by an appointive commission. Both the majority report, Number 1, and Mr. Cate's report, Number 3, leave the final decision with an appointive commission. This is fundamentally wrong. It belongs in the hands of the Legislature, and I submit that the Maryland plan, which is the minority report, Number 2, is the only one which accomplishes that. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harlow.

**DELEGATE HARLOW:** Mr. Chairman, I am in support of Mr. Cate's plan; however, I find a weakness in all three of them which I'm not going to try to amend. I'm merely going to bring it before this body, knowing that there are much more capable minds than mine that can solve the dilemma. They—all of them start out, that it says, "Immediately upon enactment of this section" and following various other things, "there will be a reapportionment committee formed." And then, down in the second paragraph, it states that "the plan"—that the commission will draw up a plan and submit it to the next Legislature that meet on the year or close to the year when the census has been taken. Well, if no corrections are made, then we will have no way to redistrict Montana until 1980, or thereabouts. We will have to continue to operate under the redistricting plan or the reapportionment plan that we have now. And if we adopt the single member district and it's adopted in the Constitution, and no corrections have been made on any of these three plans, then we will have no way to divide the state into single member districts until along in 1980. I bring that before you because I think something should be done before the final adoption. I completely agree with our Chairman that we should depend—should decide on which of these three plans we should adopt and then go ahead and make this correction. I do not feel that we should try to solve this thing right now. I merely bring it to your attention.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I would like to have you look on Plan 1, if that's in order, to counteract Mr. Harlow's criticism, which I think is justified. On line 24, on the sheet that you have been given, it says if no exceptions are filed within 30 days, or if filed and acted upon, the commission's plan shall be final and have the force of law for the next ensuing legislative and congressional election.

**CHAIRMAN GRAYBILL:** Is there further debate or discussion?
Mr. Schiltz.

**DELEGATE SCHILTZ:** I would only like to say that I support Mr. Cate's plan for all of the same reasons as Mr. Garlington supported it. I think he's got a nice, tidy section here and in my opinion, the Legislature is totally unable to reapportion itself. It has too many interests that are not necessarily in accord with the broad interests of the state, and this kind of a commission would do it.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, in regards to Paul Harlow's statement that there wasn't provision for ratification and redistricting before 1980—the first line clarifies that in Proposal Number 2, which I support, by saying that in the Legislative Session following ratification of this Constitution and in the sessions preceding each census. I support Number 2, Plan Number 2 here, the minority report. I feel that legislators have been elected. They understand the districting perhaps better than anyone else and they should have an opportunity. In looking over the record, as I mentioned yesterday, from 1963 to 1970, most of the redistricting throughout all the states in the United States was accomplished through the legislative process and through the Legislature themselves. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Shortly after the one man, one vote decisions in 1964—I think it was 1966 or 1967, the Illinois Legislature, which was controlled by the Republican party, and both houses issued—put forth a plan. A Democratic Governor vetoed the plan. Thereafter, they appointed a 10-man commission, 5 Republicans and 5 Democrats. They could not agree. The statute provided that all the members of the Legislature for the entire State of Illinois had to run at large—177 Republicans and 177 Democrats were on the ballot that every voter in the State of Illinois had to use. I support Mr. Cate's plan.

**CHAIRMAN GRAYBILL:** Mrs. Cain.

**DELEGATE CAIN:** With regard to the ability of the Legislature to redistrict, I wish our delegation from District 23 would stand. Mr. Arness, Mr. Harlow, would you stand? We have three representatives here who live within a mile of each other. Two counties that are represented by one. This is a good example.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** I would like to comment on the statements of Mr. McNeil in regard to the fact that the elected representatives are—you know, should be given that right. That's the fundamental principle of democracy and I would agree with that, of course. But I also would say that it's probably a fundamental principle of democracy that no one should be judge in their own case; and that's the problem we have here, it seems to me.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. President, I wonder, if I'm going to consider seriously Mr. Cate's plan, I'd have to look at it, and I don't have a copy of that opening paragraph. Is there any way that we could see it?

**CHAIRMAN GRAYBILL:** It's somewhat similar to his yesterday one but it's going to be pretty hard to see. Why don't I read it again slowly?

**DELEGATE BURKHARDT:** Does he still have this 30 percent of the seats of the Legislature and all that?

**CHAIRMAN GRAYBILL:** No.

**DELEGATE BURKHARDT:** See, I don't have that and I just can't think very clearly without having it.

**CHAIRMAN GRAYBILL:** All right, let me read it for you slowly. "Immediately upon enactment of this section and following each census made by the authority of the United States"—now, at this point he is very similar to the other two except he hasn't made that little amendment that Mr. Skari made about the federal decennial census, which I presume we could do if we wanted to. "Immediately upon enactment of this section and following each census made by the authority of the United States, a committee of citizens, none of whom may be public officials, shall be designated to draft a plan for redistricting and reapportioning the state into legislative and congressional districts." So a committee has to be designated to draft a plan into legislative and congressional districts. "The legislature shall designate the membership of the commission which shall be balanced geographically and politically." He has no numerical limit on his committee. It's up to the Legislature to come up with a committee which is balanced geographically and politically. Now, that's all paragraph 1 says. It's the same as the other except the committee is chosen by the Legislature without any specific number, but it must be balanced geographically and politically. The other two plans both call for a commission appointed by the majority and minority leaders of the Legislature, and then if they can't agree on the fifth member, they go to the Supreme Court. So there's a difference in the method by which the commissions are chosen, but that's about all. Is there further discussion of the plans?

(No response)

**CHAIRMAN GRAYBILL:** If not, members of the committee, let's vote on Mr. Cate's amendment.

**DELEGATE McNEIL:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** I ask for a roll call vote.

**CHAIRMAN GRAYBILL:** Yes, we'll have a roll call vote. Now, so that we all understand each other, I just read paragraph 1 of Mr. Cate's proposal. Paragraph 2 of his proposal says: "The commission shall draw up a plan for reapportioning and redistricting legislative and congressional districts and submit this plan to the legislature at the first session after the census figures are available. Within 30 days after the submission to the legislature"—after the submission to it—"the legislature shall return the plan to the commission with its recommendations for change and the commission shall within 30 days thereafter file with the secretary of state its final plan and it shall become law. After an enactment of a valid plan the commission shall be dissolved until the next census." So, the point of this plan is that the commission draws the plan, it submits it to the Legislature and within 30 days the Legislature must come back with its recommendations and then the commission files a final plan. So it's a commission plan plus a legislative recommendation, plus the provisions on the selection of the committee.

**DELEGATE KELLEHER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Could I ask a question of Mr. Cate? Would Mr. Cate yield?

**CHAIRMAN GRAYBILL:** All right. Mr. Cate?

**DELEGATE CATE:** (No audible response)

**DELEGATE KELLEHER:** Jerome, does this provide for an odd-numbered commission or an even-numbered commission?

**DELEGATE CATE:** Well, yeah, it doesn't specify any number but I think the Legislature is smart enough to know that they're going to have to have an odd-numbered commission. I don't think we....(Inaudible).

**DELEGATE KELLEHER:** That would be your intention if we did pass this that it would be your intention that the Legislature appoint an odd-numbered commission?

**DELEGATE CATE:** Certainly, certainly—so that the vote wouldn't be tied.

**DELEGATE MAHONEY:** Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Would Mr. Cate yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Cate?

**DELEGATE CATE:** (No audible response)

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Cate, how is this going to be appointed if it happens to be a major—we decide on a bicameral Legislature?

**DELEGATE CATE:** How is it going to be what?

**DELEGATE MAHONEY:** Appointed.

**DELEGATE CATE:** By the Legislature.

**DELEGATE MAHONEY:** How are you going to do it? Two bodies?

**DELEGATE CATE:** If we have a bicameral, let the Legislature decide. Under any of these plans the Legislature is going to have to set up the committee. They're going to have to provide for appropriations for it. They're going to have to provide for the term of office. They're going to have to provide for other things. There's going to have to be some legislation introduced under any of these plans to implement this provision of the Constitution, and my position is that the Legislature ought to be given the authority to determine the number, the area representations. North Dakota, for instance, has—every judicial district has a member on the commission. Maybe that's the best way to do it. I think this is a question that we can leave to the Legislature whether it's a bicameral or a unicameral house, Mr. Mahoney.

**DELEGATE MAHONEY:** May I ask another question, Mr. President—Mr. Cate?

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** This is going to have to be done 2 years, or 1 year, I suppose, if you have an annual session, prior to the census. Is that right?

**DELEGATE CATE:** In the year preceding the census the commission would be set up and then when the census figures become available they would then submit to the Legislature immediately a plan.

**DELEGATE MAHONEY:** (Inaudible)... Mr. President, might I ask another question? I want a clarification of this question.

**CHAIRMAN GRAYBILL:** Mr. Mahoney, you may.

**DELEGATE MAHONEY:** It'll have to be set up at least 1 year in advance if it's an annual session, won't it?

**DELEGATE CATE:** I presume yes, but it's no different than any of the other plans in that regard.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Another question. What are you going to do, Mr. Cate, as of now—after the new Constitution? What provision have you made for the new Constitution?

**DELEGATE CATE:** Immediately upon enactment of this section, as it states, this commission shall be formed by the Legislature and then shall submit a plan to the next session or to that session of the Legislature. That's the problem that Paul Harlow was outlining that's inherent in these plans that will have to be worked out. There is one problem, and I think maybe this is what you're trying to get at, Mr. Mahoney. And the problem is this, and I see it in all the plans essentially, that the majority party, if the Democratic party controlled both the House and the Senate in a bicameral system, the method of setting it up might have some inherent danger in it because they might try and load it, but that's a danger that's inherent in all these plans in a sense, and it's one of those things that Mr. Aasheim so adequately pointed out this morning. None of these plans are perfect but I do feel that it's important that the Legislature participate in some way, other than doing their own reapportioning, in setting up a plan and in having the plan enacted.

**DELEGATE MAHONEY:** (Inaudible)

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Now, in your plan, do you allow the Legislature to apportion itself?

**DELEGATE CATE:** (No audible response)

**DELEGATE MAHONEY:** In the intervening time, Mr. President, there will be an election held, won't there—from the intervening time between the commission's set up and the new Legislature?

**DELEGATE CATE:** There could well be.

**DELEGATE MAHONEY:** Don't you think that it would be well to let the new Legislature have a chance at reapportionment instead of the last Legislature setting the commission only?

**DELEGATE CATE:** Mr. Mahoney, the experience of Montana and 20 other states have been that the Legislatures cannot reapportion themselves, as much as they might try to do so. And I disagree with you when you state that the Legislature this time reapportioned itself. The first plan went to federal court and was thrown out, period, and they were directed by that court to make certain changes which would make the plan acceptable which then, after they had the force of a court directing them to do so, they did. And the process doesn't work, and from an idealistic standpoint I would like to see the Legislature be able to do it. I don't like to take things away from the Legislature. I believe in the Legislature, but I also believe that there are certain things, like paying themselves an adequate salary and reapportioning themselves, that they cannot inherently do, because I'm not going to sit here and cut my friend, Charley Mahoney, out of a seat. I just won't do it. And that's what it gets down to.

**DELEGATE MAHONEY:** (Inaudible)

**CHAIRMAN GRAYBILL:** Mr. Mahoney, you may speak a minute.

**DELEGATE MAHONEY:** For the benefit of the members, last year the House of Representatives submitted an apportionment plan which took three districts—census districts—out of Glacier County and submitted and put these clear over west of the Continental Divide in with Flathead County—no connection or nothing—a range of the United States—the great Rocky Mountains between it. The Legislature, in its wisdom, cut it out and says it isn't going to be done. Everybody hollering to high heaven, it can't be done. The Supreme Court won't stand for it, but they did stand for it. All I'm trying to do is to get something down so the Legislature has a little something to say, instead of it being divided up by a computer. And this is what we're going to in this state is, go on, feed it to the computer and this becomes the apportionment, not caring about trade territories, not trade—or caring about anything, only the one member, one vote, and this is what's bothering me; why I'm trying to get back and let the Legislature at least have something to say about apportioning itself. I think this should be taken very seriously—to take away the power of the people that you have elected—and I don't care where they're elected from, they're elected by the people. And I hope, Mr. President, that this does not prevail.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman, I rise in support of Mr. Cate's proposal. I sat through many sessions of the Legislature. Many, many Mondays I spent hearing them discuss this reapportionment business. On my 10th program, March 2nd, 1971, I reported: "I sat in the Senate Monday and listened to the senators discuss reapportionment. Although both chambers realize they must reapportion themselves according to the 1970 census or the courts will do it, again, many senators want to increase their number and the House does not agree. A decision must be made soon because candidates for the Constitutional Convention have to file by April 22nd." We know we could not file by that date. We know we had to wait and run in the primary in September because of the failure of the Legislature to apportion itself. I agree with Mr. Cate. It's like removing your own appendix. The Legislature will never do it to itself.

**CHAIRMAN GRAYBILL:** Very well. Now, the Chair feels that we have three different proposals here and I'd like to get the sense of the body on which one we want and then we can decide whether we want to change some minor language. So, I'd like now to place Mr. Cate's proposal before you. You understand that the majority report reapportions by commission. The minority report reapportions by commission but it allows the Legislature an absolute right to change the plan and come up with its own. And Mr. Cate's proposal reapportions by commission and the Legislature may recommend changes only. Now, we'll vote on the voting machines, and so many as shall be in favor of Mr. Cate's recommendation, please vote Aye; and so many as are opposed, please vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, the ballot is closed. Will you please take the roll call?

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Absent |
| Artz | Absent |
| Ask | Aye |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Absent |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Absent |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Absent |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Graybill-Chairman | Aye |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh, | Aye |
| Harlow | Aye |
| Harper | Absent |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Aye |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 55 delegates voting Aye; 36 voting No.

**CHAIRMAN GRAYBILL:** 55 delegates having voted Aye and 36 No, Mr. Cate's proposal prevails. Now it seems to me that that's an indication that this body wants to reapportion on Mr. Cate's basis. I would like to ask leave that we suspend consideration of this matter and go to Number 7 while Mr. Cate has this printed so that we can then look at it carefully. And if you want to change some of the language at the beginning or some of the minor things, you can. Is there objection to that plan?

(No response)

**CHAIRMAN GRAYBILL:** If not, Mr. Cate, would you approach the rostrum and in the meantime, let's turn to Section 7 of the Legislative proposal which was passed over.

**CHAIRMAN GRAYBILL:** Very well. The Convention will be in session. Will the clerk please read Section 7.

**CLERK HANSON:** "Section 7: Vacancies. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law." Mr. Chairman, Section 7.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. President, I move that when this committee does rise and report, after having under consideration Section 7, that it do recommend be approved.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. President, I move that when this committee does rise and report after having under consideration Section 7, that it do recommend be approved.

**PRESIDENT GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. President, we discussed this at length the other day. I really have nothing more to add. We discussed why we put in having the vacancies filled by a special election. We've moved to pass consideration on this to consider an amendment offered by Mr Rollins. His amendment would not, in any way, change what we have proposed in the sentence in Section 7.

**CHAIRMAN GRAYBILL:** Mr. Rollins, do you want to make your amendment? The clerk will read it if you want to make it. Yes. Will the clerk read Mr. Rollins' amendment?

**CLERK HANSON:** "Mr Chairman, I move to amend Section 7 of the Legislative Committee proposal, page 18, line 22, by adding the following new material: quote, The office shall be vacant when any elected member of the legislature ceases to reside in the district from which elected. end quote. Signed, Rollins."

**CHAIRMAN GRAYBILL:** Mr. Rollins

**DELEGATE ROLLINS:** —President, this is my third attempt at introducing this amendment. I was told once that I was in the wrong place, and the second time, the wrong time. I hope I now have that happy coincidence of time and place (Laughter) where we can consider this. My concern here is that case in which an elected representative, after the election and during the time when he is still in office, moves from one district to another. I feel that we should have some provision in the Constitution to cover such a case as this. Mr. Romney used the context a little differently, but perhaps this is one case in which we can see the carpet tack before we step on it. I urge consideration of this amendment.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I rise in opposition to this proposed amendment because I'm hoping later on today to get some modification on residency out of Section 4. But my point is, where you live really doesn't make any difference. If you're elected by the people, the people apparently elected you and had trust that you will represent them in that particular session. And, if your house burns down and you have to find a new house on the other side of town, then you have to give up your seat in the Legislature. And it just seems to me that that is trivia in the "nth" degree. And while I just don't see particularly in the city where residency has any relevency to the whole matter, but further than that, to write this into the Constitution that the office becomes vacant when you move just seems to me, to be pushing it way too far and I speak in opposition to the amendment.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, in answer to Mr. Joyce, this is not a case of moving from one ward or precinct in the city, it's a case of moving to a totally different area in the state.

**CHAIRMAN GRAYBILL:** Oh, Mr. Vermillion—excuse me.

**DELEGATE VERMILLION:** Would Mr. Rollins yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Rollins?

**DELEGATE ROLLINS:** I yield.

**DELEGATE VERMILLION:** Mr. Rollins, if this Convention should decide later on that they would adopt a recall provision, would that satisfy you.

**DELEGATE ROLLINS:** I don't think so. Who would recall him? The district from which he departed or the one from whence—or from where—which he came. I don't think that would handle it too well.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, I think maybe Mr. Scanlin overlooked the idea that we now have single member districts, and in a city like Billings, for example, or Butte or Great Falls or even Helena, there will be several single member districts. And in fact what Mr. Joyce said is literally true, that to move across town would be to remove yourself from your district.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman, would Mr. Rollins yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Rollins?

**DELEGATE ROLLINS:** I yield.

**DELEGATE ECK:** Mr. Rollins, would you accept wording—instead of "district" say "of the district", or "of the county in which his district is situated", which would take care of the situation? In other words, he could move a few blocks away to another district and he would still be within the same general area in which he was elected.

**DELEGATE ROLLINS:** "County and district", might be all right.

**DELEGATE ECK:** Well, I don't think that that would add anything. I think that what we're trying to get at—excuse me, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** I think that what we're trying to get at here is that a person might move, and as I indicated the other day, that this could be especially true in a college situation where he might be forced to move, really, out of the district in which he was elected. But if he still lived within the county, this way he could maintain his office.

**DELEGATE ROLLINS:** Would you state your original—

**CHAIRMAN GRAYBILL:** Just a moment. Mrs. Eck, did you have a question? Mrs. Eck has the floor.

**DELEGATE ECK:** I will yield to Mr. Rollins' question.

**CHAIRMAN GRAYBILL:** Very well. Mr. Rollins.

**DELEGATE ROLLINS:** Mr. Chairman, I would like Mrs. Eck to state her question again, please.

**DELEGATE ECK:** I wondered if you would accept the wording: "A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law." Going on to say: "The office shall be declared vacant whenever a member moves out of the county in which his district is situated."

**DELEGATE ROLLINS:** I think that would be acceptable. Thank you.

**DELEGATE ECK:** Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Now, Mrs. Eck, I heard your suggestion. Have you made a motion or, Mr. Rollins, are you asking leave of the body to amend your amendment?

**DELEGATE ROLLINS:** (No audible response)

**CHAIRMAN GRAYBILL:** Mr. Rollins is asking leave of the body to amend his amendment so that it reads: "The office shall be vacant when any elected member of the legislature ceases to reside in the county in which his district is situated." Unless I hear objection from the floor, we'll allow this amendment in his amendment. Mrs. Bates, do you object?

**DELEGATE BATES:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Do you object?

**DELEGATE BATES:** No.

**CHAIRMAN GRAYBILL:** All right, there being no objection, we'll allow the amendment. All right, Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, in view of the fact that we had a county commissioner that was elected from a district and then he moved into town, he did complete his term there, I don't know—I feel that this should not be in the Constitution. It is legislative matters and is statutory. Again, what constitutes a vacancy? If you take a trip to Arizona for 6 or 8 months of the year, should that be declared vacant—that district? There are many things involved here and I think it is a legislative matter. Thank you.

**CHAIRMAN GRAYBILL:** Is there further discussion?

(No response)

**CHAIRMAN GRAYBILL:** If not, the question is on Mr. Rollins' amendment which would add to subsection—or to Section 7 of the Legislative Article the following sentence: "The office shall be vacant when any elected member of the legislature ceases to reside in the county in which his district is situated." So many as shall be in favor of Mr. Rollins' amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it.

**DELEGATES:** Division.

**CHAIRMAN GRAYBILL:** Very well, we'll have the—we'll use the voting machines. So many as are in favor of Mr. Rollins' added sentence in Section 7, vote Aye; and so many as are opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Does any other delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, 49 having voted No, 37 having voted Aye, the motion fails. Very well, we're back on the proposition of Section 7. Is there further discussion of Section 7?

(No response)

**CHAIRMAN GRAYBILL:** If not, members of the committee you have before you on the motion of Mrs. Robinson that when this committee does arise and report, after having under consideration Section 7 of the Legislative Article, that the same shall be adopted. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it. Section 7 is adopted. If you'll now turn to page 32, you'll find the majority bicameral proposals. The Chair presumes that since the majority and the minority expect their proposals to be nearly identical—that we can consider these by simply pointing out that they are identical as amended. Now, we'll skip 1, 2 and 3, which we're going to debate later, and starting with Section 4—Mr. Cate, Section 4 was passed as modified, as I recall. Section 4 of the majority unicameral proposal was passed as modified. Mr. Cate, can you speak to that?

**DELEGATE CATE:** That's correct. Did you want me to move?

**CHAIRMAN GRAYBILL:** If you'll move that the minority—or that the bicameral report be passed as modified in the unicameral proposal, we'll take—put that motion.

**DELEGATE CATE:** Mr. Chairman, I move that the—when this committee does rise and report that it accept as Section 4 of the bicameral article, Section 4 as amended by the Committee of the Whole.

**CHAIRMAN GRAYBILL:** Very well, you've heard Mr. Cate's motion. So many as are in favor of it, say Aye

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** Very well. Section 5.

Mrs. Bates.

**DELEGATE BATES:** (Inaudible)...have these read as they were amended, please.

**CHAIRMAN GRAYBILL:** Well, I'm not sure you can. I don't think I can read it. Does anybody—I suppose we can send out for the language but I'm hopeful that we will not redebate them now. That would amount to reconsideration of them.

**DELEGATE BATES:** Well, I feel we should give some reconsideration on some of these matters.

**CHAIRMAN GRAYBILL:** Mrs. Bates, you certainly may move for reconsideration at any time. What I'm trying to do is get the bicameral and unicameral majority proposals disposed of.

**DELEGATE BATES:** I would recommend reconsideration and I so move for this qualification. Mr. Chairman, could I speak on this?

**CHAIRMAN GRAYBILL:** All right. Wait a minute until I think this through. Mr. Clerk, do we have a copy of the text as amended?

**CLERK HANSON:** (No audible response)

**CHAIRMAN GRAYBILL:** You're seeing about it? Very well, we'll stand in recess for 5 minutes while we try to get the text of what we've passed up until this time.

(Convention in recess from 10:50 until 11:00 a.m.)

**CHAIRMAN GRAYBILL:** The Convention will be in session. Very well, the Chair would like to announce that during the recess we met with the Rules Committee and with the majority, with the Chairman and Vice-chairman of the Legislative Committee, and we are going to suggest the following procedure. All but two sections of the bicameral majority report were initially—or, let's say, are now the same as the unicameral majority report. There are a couple of them that are still to be considered, such as the veto which has been left out, and such as 15, which of course is Mr. Cate's proposal we worked on this morning. But other than that, there are only two that there's any minor differences in between bicameral and unicameral. So the Chairman of the Legislative Committee is going to move that we adopt as the bicameral majority report the same language as amended of all of these sections that are similar. Then we will debate the two that are different, and then we will go on to the next matter. And if there are sections which any of you wish to reconsider you certainly shall have an opportunity to reconsider them. I'm asking that reconsideration be the last thing on the Legislative docket. So, we're going to simply adopt the majority bicameral as the same as the majority unicameral amended.

Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. President, I move that we adopt Sections 4, page 14; Section 5 on page 15; Section 6 on page 16 and 17 and 18; Section 7 on page 18; Section 8 on page 19; Section 9 on page 19 and 20; Section 10, subsections 1, 2, 3, 4 and 5—except subsection 4 which was killed; Section 11 on page 22; Section 12—oh, 11 is on 23, also. Section—

**CHAIRMAN GRAYBILL:** 12.

**DELEGATE AASHEIM:** —12 on page 24; we passed Section 13 on page 25 and 26 and 27; we take Section 14 on page 27; we adopt subsection 1, 3 and 4. I move we adopt these as amended in the unicameral proposal. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Now, I hope we're not—you get the impression that we're trying to railroad something here. You have a chance now to think about any one of these and talk about them and make any further amendments that you feel should fit into the bicameral proposal. Remember this is going to be debated further, whether we want the bicameral or unicameral or both on the ballot; and if there are sections in the bicameral that you feel are—should be different from the unicameral, that this is the time to consider, reconsider your action even after adopting my motion. I move the adoption of my motion.

**CHAIRMAN GRAYBILL:** Very well. It's the Chair's understanding that if you want to reconsider you may reconsider any of them when we reach the reconsideration stage on the calendar. Now, with that explanation that we're adopting the bicameral majority report, the amended unicameral majority reports, so many as are in favor of Mr. Aasheim's motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as opposed, No.

**DELEGATES:** No

**CHAIRMAN GRAYBILL:** The Ayes have it. Mr. Champoux, do you want to state—I didn't see you—do you want to state for what purpose you arose?

**DELEGATE CHAMPOUX:** I rise for a point of information before the vote, but you didn't recognize me. My question was, why do we need a vote of this kind at this time?

**CHAIRMAN GRAYBILL:** Why do we need what?

**DELEGATE CHAMPOUX:** —vote of this kind at this time. Why is—

**CHAIRMAN GRAYBILL:** Because the majority bicameral and majority unicameral, and because the Legislative Committee came in with a majority both bicameral and unicameral and we adopted a motion to send them both to Style and Drafting to figure out a way to put this issue on the ballot. Therefore, there have to be subsidiary bicameral and unicameral proposals for all of these neutral points and we've now covered all the neutral points from 3 to 16 in the unicameral proposal and we're simply picking up the ones that are identical in the bicameral. That's the reason for it, so Style and Drafting will have the language available so that they can figure out how to put it on the ballot. Now, if there are any of them, however, that you want to reconsider later, you certainly may reconsider them at the reconsideration time. Does that Mr. Champoux, does that help you?

**DELEGATE CHAMPOUX:** Well, you know it's—I thought we were—the procedure was, when we get through with one of these committee proposals, we just vote it in toto, and if the problem is the question of time to get it to the printers, well then, what about the reconsiderations? I don't really see the need of this vote at this time.

**CHAIRMAN GRAYBILL:** Well, the point is, that the majority of the committee came in with both a bicameral and a unicameral proposal. Now, we've gone clear through the unicameral proposal and it's taken us two and a half days. Now, rather than go back through the identical language on bicameral, we've adopted the ones that are the same. There are two that we're going to debate that are slightly different, as you'll see in a moment. Then we'll go back and debate 1, 2 and 3 which is the basic issue of bicameral-unicameral. Okay.

Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman, I understood when we began on this that we had not yet voted on the question of whether or not we would put these two proposals as alternatives on the ballot, and according to my notes, we haven't made that decision. Would, by this vote, we have—have we now decided that this will go on the ballot?

**CHAIRMAN GRAYBILL:** No. Perhaps I overstated in saying on the ballot. We have sent it—we have voted to send it to Style and Drafting as a dual proposal so that Style and Drafting may consider whether or not it should be put on the ballot, and we'll consider that when Style and Drafting comes back. All we've done now is adopt the identical language that we've already adopted for unicameral for the bicameral majority proposal.

Mrs. Bates.

**DELEGATE BATES:** Mr. President, in talking to some of the delegates, they felt—they gave me the impression that they felt that the bicameral would be debated section by section, and that it perhaps would be a great deal different than the unicameral. And I'm sure this can still be done under reconsideration, but I think that some of the delegates had the wrong impression as to now.

**CHAIRMAN GRAYBILL:** Very well, the point is that the majority bicameral and the majority unicameral proposals on all of the matters that we just voted on there were identical. Where they were not identical, we are still going to discuss them. There are only two of them left since we knocked out two that had differences in them. Now, having changed that language, or worked that language over in the last two and a half days in unicameral, we simply have adopted that same language for the bicameral to keep them identical. Now, there's still plenty of time to reconsider them, but that's where we are.

Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, as I understand it, any of these sections which appear to be identical at this stage of the game can be handled by reconsideration after we have completed our survey of the bicameral section, but is it reconsideration if we do not touch upon them in the bicameral discussion? Take, for example, Section 4 - Qualifications. It has been decided in the unicameral section. We have not considered it in the bicameral and I think it was one of those that was suggested we pass over at this time. Now—

**CHAIRMAN GRAYBILL:** Well, Mr. Romney, may I explain to you? We have considered it in the bicameral because that's what we just now did. We just now considered about 10 sections at once and—

**DELEGATE ROMNEY:** So that would constitute—

**CHAIRMAN GRAYBILL:** That will constitute our consideration of them for bicameral and they may be taken up on reconsideration later. But, the reason I want to reconsider later is after we've debated 1, 2 and 3, we may only have either unicameral or bicameral left. I don't know.

**DELEGATE ROMNEY:** Very well.

**CHAIRMAN GRAYBILL:** And at that point we can reconsider to our heart's content but I think it's foolish to reconsider them and then go ahead and change the system, if we do. No, the primary consideration of them—the point of Mr. Aasheim's motion—was to give the bicameral sections that are identical the same treatment that we've now given the unicameral sections. We have avoided reading them section by section only for the reason that we are almost—it's almost impossible, without taking a long recess, to be able to read them to you section by section as amended because they have not been retyped since we did them yesterday.

**DELEGATE ROMNEY:** That being the case, when will the decision be made whether to place them both on the ballot or not?

**CHAIRMAN GRAYBILL:** Well, that consideration has—will be made at two times. First of all when we debate 1 and 3—1, 2 and 3. If this body should decide to not follow the recommendation of the Legislative Committee, which is that they both go to Style and Drafting, if you should vote not to do that by various amendments and so forth, then of course, we'd only have one. On the other hand, if you do vote to do what they suggested, both the majority proposals—both bicameral and unicameral—would go to Style and Drafting and then Style and Drafting would have the job of deciding what to do with the dual proposal. Presumably their solution would be to put it on the ballot.

**DELEGATE ROMNEY:** As they did in North Dakota?

**CHAIRMAN GRAYBILL:** Well, in some form which will then come back and be debated when the Style and Drafting report comes back to this Convention. I trust that everyone understands that when we finish a section, as we did General Government the other day, and as I hope we'll do Legislative today, it goes to Style and Drafting. Style and Drafting then considers the whole thing with the new language, cleans it up if they think there's any differences, and makes a report of the Style and Drafting Committee on the Legislative Article, at which time we have to approve their report. If we do approve it, then it lays aside until we're through and then it's considered a third time as the Constitution as a whole. Okay. Well, now we're down—we've considered 4, 5, 6, 7, 8, 9, 10, 1, 2, 3 and 5; 11, 12, 14 sub. 1, 3 and 4. Those have all been considered by—on the bicameral. Now, Section 10 of the bicameral proposal, which you'll find on about page 33, Section 10 has a sub. 6 and a sub. 7 that the unicameral did not have. And at this time, I'll ask the clerk to read Section 10, sub. 6, of the bicameral proposal on page 34.

**CLERK HANSON:** "Section 10, subsection 6, page 34: Neither house shall, without the consent of the other, adjourn or recess for more than 3 days, nor to any other place than that in which the two houses shall be sitting." Mr. Chairman, subsection 6.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 10, subsection 6, of the Legislative Committee report, I recommend that the same do pass. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** In this section which pertains only to the bicameral, the committee was concerned that one house could pass its bills and then simply adjourn if this provision was not kept. Also, they felt that it could be used as a delaying tactic if it were not kept.

**CHAIRMAN GRAYBILL:** Very well, is there discussion of Section 10, sub. 6 of the bicameral majority report?

(No response)

**CHAIRMAN GRAYBILL:** If not, members of the Committee, you have before you on the motion of Mrs. Bugbee that subsection 6 of Section 10 of the bicameral report, and her motion is that when this body does arise and report that the same shall be adopted. So many as are in favor of her motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No, and the Ayes have it. Will the clerk read subsection 7?

**CLERK HANSON:** "Section 10, subsection 7: The legislature shall adopt and use joint rules. One rule shall require that, except on final session day, each report of a conference committee contain an explanation of the committee recommendations and be duplicated and distributed to each legislator 24 hours before action may be taken on an affirmative vote." Mr. Chairman, subsection 7.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 10, subsection 7, of the Legislative Committee report, I recommend that the same do pass. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee

**DELEGATE BUGBEE:** In addition to the comments, I'm reading page 46, Mr. Chairman. But this should have been added to the committee proposal explanation, in addition to what's already there, and I quote: The purpose of this section is to make known to the legislature the reasons for the actions of the conference committee, unquote. It would provide adequate time for consideration of conference committee recommendations. And of Section 7, the first sentence is new and will require coordination between the two houses. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Holland, would you stand and announce your presence so you can vote?

**DELEGATE HOLLAND:** Yes, will you please mark me present, Mr. Chairman?

**CHAIRMAN GRAYBILL:** Very well. Is there discussion of subsection 7?

Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman, on line 3 on page 46, after the word "rules", retain the period and delete the balance of the paragraph. I move—I so move. There are—or there has been considerable said about the conference committee and the unicameral proponents are very concerned about this conference committee. And I suppose there's reason for concern, but they have the impression that there's no conference committee needed in the unicameral. Now, yesterday afternoon we had a conference committee. Mrs. Robinson and I sat over there in a conference and talked things over, didn't we? We had a conference committee. And to suppose that you don't need a conference committee in the unicameral is erroneous. When you get in a deadlock, you may send some people into conference to settle the deadlock. Now, why I oppose this last language in the conference committee—24 hours. We're again legislating. Why tie the Legislature down with material like this? They're in the last throes of finishing up and they've had to have a conference committee, and they can't act on it for 24 hours because of this rule in the Constitution. I can think of nothing more ridiculous. I think this conference committee is a big bugaboo to some people. It is necessary to reconcile differences which happen in any body, but why tie it down to expecting a 24-hour report when it may cause a disruption in the normal process of closing a session. For that reason, I move that we delete the last sentence beginning with "one rule".

**CHAIRMAN GRAYBILL:** Very well, Mr. Aasheim, your motion is accepted.

Mr. Romney.

**DELEGATE ROMNEY:** (No audible response)

**CHAIRMAN GRAYBILL:** Mr. Romney defers.

Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. President, I would first of all rise in opposition to the motion of Chairman Aasheim. First of all, we did not have a conference committee because we did not take a vote; we did not dispose of any legislation; we merely had a consultation on the sofa. (Laughter)

**CHAIRMAN GRAYBILL:** Would you care to be more specific, Mrs. Robinson? (Laughter)

**DELEGATE ROBINSON:** And it was open to the public (Laughter)—as most conference committees are not. It is my opinion, and your consideration of whether or not to delete this section, should be revolved around two things. It's fine with me to omit this section, particularly if you're in favor of a unicameral Legislature. Because to me, in my opposition to a bicameral Legislature, half of my opposition is based on what happens in the conference committee; that most of the reports are received from conference committees and they're appointed in the last 5 or 10 days of the entire legislative process. Rarely, if ever, are conference committee decisions overturned and the people in the legislative body do not really know what has gone on in the conference committee. I would say that, by deleting this, you are obviously giving unicameralists quite a bit more leverage in dealing with the bicameral system because this has been pointed out to be one of the most blatant violations of democratic government in the conference committee, and I would strongly urge you not to delete this section.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I apologize for the delay. The seating capacity and the books and one thing and another are not quite adequate. I rise to resist the motion of my friend, Mr. Aasheim, and I do it because I think that the conference committee has been one of the central reasons why the Legislature fails to function best in the interests of the people. I recall that the autobiography of Senator George Norris, the father of the Nebraska unicameral program, in his autobiography Senator Norris wrote a chapter concerning the unicameral system and one of the—or, wrote a chapter concerning the conference committee, and he pointed out that it was one of the most vicious characteristics of the bicameral system, and that it was one of the reasons why unicameralism should be adopted. He cited case after case in support of his view. Now, those of you who have read the journal of the House of Representatives or the Senate of the State of Montana have no doubt read reports of select committees, such as conference committees. I am going to take the time to read one to you: "April 1st, 1971: That the house recede from paragraphs 1, 2 and 3 of the March 20, 1971, house committee on reapportionment amendments to Extraordinary Session Senate Bill Number 1. Amend Section 3, page 3, line 22, following the word, 'such', by striking the word, 'in'; amend Section 2, page 3, line 10, by striking the sentence starting with the word 'the', in quotes, and ending with the word 'years', in quotes, on line 14 and inserting in lieu thereof the following words, figures, and punctuation: 'The new senator in district 15 and 20 shall serve for a 2-year term upon his or her first election of 1972', and that the Senate accede to the remaining house amendments except as noted above, and as so amended be adopted." And then it has the signatures of the House of Representatives and of the Senate Representatives. Now, I submit that that is very intelligible (Laughs) and that representatives or senators in whichever body the report comes before, know all about it. I picture for you the final days of a Legislative Session when there are half a dozen such conference committee reports bouncing from the rostrum into the house here and they're all worded similarly, and the explanation made by weary legislators who are managers for the House or for the Senate, if it is in the other body, are not very explanatory. I think that before voting on conference reports, and you obviously in a bicameral system must have conference committees in order to compose the differences between the two houses, I think it is manifestly essential that the representatives or the senators know what they're voting about. And this would provide a vehicle for such knowledge. Now we do not need such a section in a unicameral house because, obviously, there are no conference committees; so this is for the bicameral section alone. The gentleman from Antelope advises that 24 hours is too much time to be exhausted at that stage of the game, and I realize that 24 hours is considerable time in the busy and hard schedule of the Legislature, especially in its closing days. So, when this was first submitted there was a final proviso in this section which provided that, except for the final day. This left a hiatus when there would be no such protection for legislators. It was suggested in the hearing by Senator Groff, and I think it was good and I accepted it. But it has disappeared and I would like to offer an amendment providing that there be added after the word "report", "except for the final day of the session", which gives protection. Now, we have decided, apparently, that we're going to have 90-day sessions and there is going to be an opportunity for the Legislature to provide additional time if it so desires and if it is required. So I think that giving the legislators all of the tools provided by an explanation in the conference report is not only worthy but I think it's essential, and I think that the time that would be used is very desirable. I urge that this section be retained with the amendment.

**CHAIRMAN GRAYBILL:** Now, Mr. Romney, your amendment is out of order until we get rid of Mr. Aasheim's amendment because you've amended a deleted section.

**DELEGATE ROMNEY:** I serve notice that if my amendment—if this survives Mr. Aasheim's attack, that I will offer an amendment.

**CHAIRMAN GRAYBILL:** Right. Very well. All right, is there other discussion of Mr. Aasheim's amendment to delete the second section of subsection 7?

Mrs. Bates.

**DELEGATE BATES:** Mr. President, I rise in opposition to deleting this section. I feel it is one of the problems that we have had with the Legislature, the lack of visibility and responsibility for a more effective Legislature. In the past this conference committee was questionable and I think this would—is very important to retain in and to pass on. Yesterday a proposal was sent back to our committee for reconsideration. I wondered what happened. A few minutes ago I found out. This is the first time I've ever heard of a conference committee in a unicameral body. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, I rise in support of Mr. Aasheim's motion. I would say that we could take any place in that recording that we're just taking now and it would sound just as garbled up as what Mr. Romney's little speech give. When a conference committee reports, you usually are reporting on some specific subject that you wasn't able to agree on and the amendments that are put in there, though they may sound kind of strange to the outsider, are very plain to the people that are setting on the floor of the House or the Senate. You're deciding to do some certain thing. One or two words one way or another makes a difference what you do there. They know what those words mean and then they debate it on the floor to accept this conference committee report. When they accept it, they debate it. Also like to say that if you put this 24 hours on, suppose you come in with a conference report today—the conference committee reports. You wait 24 hours. You take a vote on it, you reject it; you have another conference committee. They come in the next day with another report. You lay it on the desk another 24 hours. This thing could go on and on and you finally, with this 24-hour limitation that you have here, or requirement, you'd be putting the Legislature in a position where they would accept something they might not like because they'd never end the thing. You never know when the last day is. I'd like to ask that question—how do you know when the last day is until you finally adjourn sine die? I haven't figured this one out. You would always be on this 24-hour penalty, restriction, that you'd have to wait for. No way, no way can—I can see that you could determine that you—that the last day was there. Therefore, I submit that 24 hours would have to wait on every conference committee report. Now, in the final days of the Legislative Session you talk about having five or six conference committee reports coming in all at once. That's all you have to do because you have all the rest of the legislation taken care of. The reason you have the conference committee is there's something that you couldn't resolve between the two houses. I think this would be real foolish to put this—add all that language and cause the Legislature to live under a set of rules that we're passing here that puts them in a position where they have no place to move to and operate except under this rule. I say that they should make their own rules and operate under them.

**CHAIRMAN GRAYBILL:** Very well, the issue before us is—

Mr. Aasheim.

**DELEGATE AASHEIM:** May I close?

**CHAIRMAN GRAYBILL:** (Inaudible)

**DELEGATE AASHEIM:** Mr. Romney, my good friend, Mr. Romney, said that when these conference committee reports are brought on the desks, you don't know what you're voting about. Well, I would like to ask Mr. Romney a question, but I won't. I'll just make a statement. I'm sure he has voted many times in the Legislature about matters he didn't know very much about. That's par for the course. I think Mr. Romney made that statement himself the other day. It's impossible to know what's in these bills—all of it. It's just impossible. You have faith in your fellow man when you're sitting in this body. When a committee makes a report, you have faith in that committee report because you have friends on that commit tee. You know them; you respect their judgment. If they let you down, you won't use their judgment again. And when these people go into a conference committee it's because they are tied up—the two houses are tied in thinking. But you know, basically, in what areas that you are in agreement. Now Mr. Romney gave a very lucid explanation of one particular bill, and I suppose that's true—there had to be corrections. But, if you are a responsible legislator you're going to check those corrections before you vote on them and you're going to vote—you're going to check them immediately. You're not going to wait because you know you're pressed for time, like Mr. Eskildsen said. You have nothing else to do but look at these conference reports on the last days of the session. Because—I think someone said the other day, the last days of the session, most the legislators were out playing golf because there was nothing to do but wait for these conference committee reports, because that's the thing that's pending—these conference committee reports. And when they come on the desk, you have nothing else to do but look at them. And I again say, why tie the Legislature down? Why don't you get after the Legislature to reform their rules so that they are what you call democratic, but let them do it. Let's not do it here.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Aasheim's amendment which would delete the second sentence of subsection 7 so that the subsection would just have the first sentence: "The legislature shall adopt and use joint rules." Then the whole sentence about the conference committee and when it shall report would be dropped. So many as are in favor of Mr. Aasheim's amendment, please say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it.

**UNIDENTIFIED VOICE:** Division.

**CHAIRMAN GRAYBILL:** Someone care to stand and make a motion for a division? There wasn't much question about that.

(Delegate Kelleher arose but his remarks were inaudible since he did not speak into the microphone.)

**CHAIRMAN GRAYBILL:** Do you want a motion for a division? We'll have a division but no roll call. Please use the voting machine. Those in favor of the amendment to delete that sentence, say Aye. Those opposed, say No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** 64 Ayes, 31 Noes. The motion carries. Now, Mr. Loendorf, we're still on Section 7. We haven't adopted it finally. Is that where you want to be?

**DELEGATE LOENDORF:** (Inaudible response)

**CHAIRMAN GRAYBILL:** Very well, Section 7.

**DELEGATE LOENDORF:** Mr. Chairman, since we've deleted the final section, I would now move that we delete the first section of Section 10, subsection 7. The present Constitution does not require the Legislature to adopt rules—joint rules—I know of no reason why we should do so in this Constitution. Perhaps someone can tell me a reason. If they will, I'll vote to retain it; if not, I think we should delete it.

**CHAIRMAN GRAYBILL:** Very well, Mr. Loendorf has moved that we delete the first sentence so that would mean that we would delete subsection 7 in its entirety. Is there any discussion?

Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman, the Legislature will do this ordinarily and since we so many times refer to advice from California, that the former speaker of the house when he sat here beside me, said that you should have this stipulation in for protection. But I would have no objection to deleting it since it was in the present Constitution.

**CHAIRMAN GRAYBILL:** Is there any other discussion?

(No response)

**CHAIRMAN GRAYBILL:** Very well, the issue then is on Mr. Loendorf's motion that we delete subsection 7 of Section 10. So many as shall be in favor of deleting it, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** Well, the Chair is in doubt because not everybody voted. Will everybody use the voting machines. So many as are in favor of deleting it, say Aye and—vote Aye, and those that are not, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** 66 Ayes, 27 Noes, it's deleted. Will the clerk now read—let's now turn to Section 14, which is on page 36. This is the section on impeachment. Now, subsections 1, 3 and 5 were substantially identical but subsection 2 has a slight difference so will the clerk please read Section 14, Subsection 2?

**CLERK HANSON:** "Section 14, subsection 2: The legislature shall provide for the manner, procedure and causes for removal by impeachment and may select the senate as tribunal." Mr. Chairman, subsection 2.

**CHAIRMAN GRAYBILL:** Mrs. Bates

**DELEGATE BATES:** I move that when this body does rise and consider that after having under consideration subsection 2 of Section 14, I recommend do pass.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, this is identical to what we have in the present Constitution, that the Senate may sit as a tribunal. It could not be in the unicameral section and so therefore we must now vote on this. Thank you.

**CHAIRMAN GRAYBILL:** Is there discussion about this subsection?

(No response)

**CHAIRMAN GRAYBILL:** If not, members of the committee, you have before you Mrs Bates' proposal that when this committee does arise and report that subsection 2 of Section 14 of the bicameral majority report be adopted. All those in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**CHAIRMAN GRAYBILL:** So ordered. The revised, or the printed Section 15 that Mr. Cate had printed is now available and the pages will pass it out. Well, the Chair didn't get it. All right, I guess you all have before you Mr. Cate's proposed amendment to Section 15, subsection 2 to replace subsection 2 through 6, and Mr. Cate, I suppose it might be correct to point out that in retyping this Mr. Cate put in the first sentence, the words that were in the majority and minority report, namely, "in the legislative session following ratification of this Constitution." He made that change. Other than that, it's as we read it to you before. Mr. Cate, do you care to begin the debate on this subject and we'll discuss this?

**DELEGATE CATE:** Mr. Chairman, one other change that was made, the last sentence, we took off the words that—the last four or five words of that sentence so that it would be clear that this commission would be dissolved and not stand by to serve as the same—the same commission stand by to serve for the next reapportionment.

**CHAIRMAN GRAYBILL:** Very well, would you move that we adopt this in the Committee of the Whole?

**DELEGATE CATE:** I'll move that when this committee does rise and report that it accept Section 15, subsection 2, the language set forth on this proposed amendment which the members of the committee have before them.

**CHAIRMAN GRAYBILL:** Very well, now you all have it before you. Is there further discussion? Or are there further amendments?

Mr. Habedank.

**DELEGATE HABEDANK:** Would Mr Cate yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Cate?

**DELEGATE CATE:** Yes, Otto.

**DELEGATE HABEDANK:** Is it your intention that this shall occur each census, if there are 5-year census, or each decennial census?

**DELEGATE CATE:** Mr. Habedank, it is our intention that it occur at each census and the reason for this is primarily this, that it is our belief that if there is a census and it shows a change in population, that if we don't provide for reapportionment, somebody's going to go to federal court and get it done; and so, let's face the reality of it. Everytime there's a census, if there's a change in population, somebody's going to have it reapportioned and so that's why that decennial was taken out—was not included.

**CHAIRMAN GRAYBILL:** Mr. Cate—or, Mr. Kelleher.

**DELEGATE KELLEHER:** Would Mr. Cate yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Cate?

**DELEGATE CATE:** Yes.

**DELEGATE KELLEHER:** Jerome, would you object to adding the words, "an odd-numbered", on line 3 after the words, "United States", and before the words, "committee of citizens", so that line 3 would read: "the authority of the United States and odd-numbered committee of citizens"? O-D-D dash N-U-M-B-E-R-E-D.

**DELEGATE CATE:** It's a—I don't think the language is necessary but I have no objection to that amendment.

**DELEGATE KELLEHER:** Well, I'm going to move that it be—the words, "an odd-numbered", be inserted after "United States", and before the words, "committee of citizens". May I speak to that Mr.—

**CHAIRMAN GRAYBILL:** Very well, Mr. Kelleher has made an amendment to line 2—no, line 3—so that it says: "by the authority of the United States an odd-numbered committee of citizens, none of whom shall be public officials." He added the words, "an odd-numbered".

Mr. Kelleher.

**DELEGATE KELLEHER:** I'd just like to restate my observation regarding what happened in Illinois. They had a 10-member committee and they ended up everybody running at large—never did get to redistrict. The courts redistricted.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Would Mr. Kelleher yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Kelleher?

**DELEGATE KELLEHER:** Yes, sir.

**DELEGATE DAVIS:** Mr. Kelleher, how did Illinois handle the odd-number Legislature of which you'll have a membership balanced geographically and politically?

**DELEGATE KELLEHER:** I don't understand your question.

**DELEGATE DAVIS:** Well, part of this provision provides we're going to have a committee balanced geographically and politically, and I wondered what you had in mind as far as having a balanced committee.

**DELEGATE KELLEHER:** A stalemate. These—as was on the majority report, if they want a—the members of the committee can select another member just to get it an odd-numbered. I don't want to happen what happened in Illinois with five Democrats and five Republicans and they never—they couldn't agree, so they all ran at large—177 from each party.

**DELEGATE DAVIS:** Would Mr. Kelleher yield to another question?

**DELEGATE KELLEHER:** Yes.

**DELEGATE DAVIS:** Is it your feeling then that that would not be inconsistent with the last sentence in the first paragraph about the balancing politically?

**DELEGATE KELLEHER:** It could be. Nothing's perfect. I just don't want a tie like we've had in the past where we've spent innumerable days and thousands of dollars of money.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Would the gentleman, Mr. Cate, yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Cate—Mr. Kelleh—oh, Mr. Cate, excuse me.

**DELEGATE CATE:** Certainly.

**DELEGATE SCHILTZ:** Which word do you prefer, "committee" or "commission"? You've used both and I assume they're the same thing. Are they?

**DELEGATE CATE:** Well, I think the proper word to be used is "commission" and that is the word that should be used in line 3, and I think that your committee is capable of taking care of that.

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** (Not audible)

**CHAIRMAN GRAYBILL:** Mr. Cate, will you yield?

**DELEGATE CATE:** Certainly, Mr. Chairman.

**DELEGATE NUTTING:** Mr. Cate, will you say "each census made by the authority of the United States"? We now have what they call an agricultural census which does not change the population figures in 1975, wouldn't under these conditions—still it's a census under the authority of the United States—wouldn't it require reapportionment although you have no new figures to work with?

**DELEGATE CATE:** Well, I don't think the agricultural census includes the cities and certainly that's not our intent. And I don't think that a court would interpret it that way. The—we all—perhaps the addition of the words, "population census", "population census", might cover that situation. That's a good question, Dick. I don't—

**CHAIRMAN GRAYBILL:** Mr. Cate, do you want to add the word "general population" in front of "census"?

**DELEGATE CATE:** I so amend.

**CHAIRMAN GRAYBILL:** All right, now the sentence reads: "In the legislative session following the ratification of this Constitution and in the session preceding each general population census". Now, we'll allow Mr. Cate to make that amendment unless we hear objection from the floor.

(No response)

**CHAIRMAN GRAYBILL:** Hearing none, it's so ordered. Is there other discussion?

(No response)

**CHAIRMAN GRAYBILL:** Mr. Cate, do you need to close?

**DELEGATE CATE:** I close.

**CHAIRMAN GRAYBILL:** Wait a minute. Mr. Aasheim, do you want to discuss it?

**DELEGATE AASHEIM:** Yes, please. I think this matter that was brought up here about the commission being geographically and politically balanced, I think it does pose a question here—a problem—because if they have five of each party, you've certainly got a deadlock, and I wonder—

**CHAIRMAN GRAYBILL:** Mr. Aasheim, I should point out that I forgot about Mr. Kelleher's amendment. We still are voting on Mr. Kelleher's amendment. We haven't decided that issue yet.

Mr. Davis.

**DELEGATE DAVIS:** It would seem to me—I'm most anxious to vote on this and get it concluded and I know that everybody's worked a lot on it, but I think by adding this language, if you have a committee that's balanced politically they [then] you must have an even number, so anything you would appoint other than that would be unconstitutional, wouldn't it, by this next paragraph?

**CHAIRMAN GRAYBILL:** Mr. Davis, you've directed your parenthetical question to the Chair. Could I answer that?

**DELEGATE DAVIS:** Yes, sir. I wish you would.

**CHAIRMAN GRAYBILL:** It seems to me that when it says "balanced politically", it means balanced proportionally politically. Does it mean balanced equally? In other words, if we—or what does it mean? Maybe I don't understand.

**DELEGATE DAVIS:** I don't know. That's a good thing to write in the Constitution, something we don't know what we mean, so I oppose his amendment.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** I would probably oppose Bob's amendment but I would point out that there is a third party in Montana. The Legislature might take that into consideration. I'm not sure of the name of it but it's the New Reform Party, I believe. Some of the Missoula people would know more about that than I do. And there's also Independents, a few of whom are around here, that might be appointed by the Legislature to the commission to make it an odd-numbered committee if that's what they desire to do.

**CHAIRMAN GRAYBILL:** Mr. Skari.

**DELEGATE SKARI:** Mr. Chairman, the wordage, "balanced geographically and politically", bothers me, too. I think it is a little too vague. We don't like to put in detail and yet in a case like this I think some detail is necessary. I think we could give an undue advantage here to a majority party every 10 years, or possibly even earlier than that. I think that we do have to provide for an odd number of commissioners. I think the even number of these commissioners should be chosen on the basis of majority and minority party leadership and that they choose a Chairman who is acceptable to them. I think the other states, reapportionment has—the experience of other states has proven this out, that where they had an even number this was a very serious defect, and I think that we should look into that. For that reason, I would move that we adopt the—in regard to the selection of the commission—I would move that we adopt the language of the majority proposal, reading as follows, from line 6—

**CHAIRMAN GRAYBILL:** Mr. Skari, just a minute. Now, is this—we're debating Mr. Kelleher's amendment which has the words, "an odd-numbered". Are you going to make a substitute motion for "an odd-numbered" that figures another way? You certainly may do that. I just want to know what you're doing.

**DELEGATE SKARI:** Mr. President, this would provide for an odd number of commissioners, yes, but it would be more detailed.

**CHAIRMAN GRAYBILL:** So you're going to make a substitute motion?

**DELEGATE SKARI:** A substitute motion to Mr. Kelleher's motion.

**CHAIRMAN GRAYBILL:** All right, and what will it provide?

**DELEGATE SKARI:** I would insert this language. On line 6 of the majority proposal, after the period there at the end of that sentence: "The majority and minority leaders of the legislature shall designate two commissioners." And then the bicameral alternative: "The majority and minority leaders of each house shall designate a commissioner. The four commissioners within 20 days after their designation shall elect a fifth member who shall serve as chairman of the committee. If the four members fail to select the fifth member within the time prescribed, a majority of the Supreme Court shall appoint the chairman."

**CHAIRMAN GRAYBILL:** I understand what you put in. Where does it start? After the sentence, made by the authority of the United States? You put a period, is that it? And then say—

**DELEGATE SKARI:** Mr. Chairman, after the period on line 6 where it says, "The legislature shall designate the membership of the commission which shall be balanced geographically and politically." I would strike that sentence and insert this wordage.

**CHAIRMAN GRAYBILL:** All right, for the information of the body, Mr. Skari's substitute amendment is to strike out the words that Mr. Kelleher proposed, use the first sentence as Mr. Cate left it, and then insert in place of the sentence that begins on line 6 language from the majority report, lines 6 to 11, which tells how the majority report, which happens also to coincide with the minority report, proposed solving the committee selection. In other words, to have the majority and minority leaders of the Legislature designate either one or two commissioners, and then these four designate a fifth. Now, he's proposing then as his substitute that that language in the minority and majority report substitute for the language on line 6 and 8 in Mr. Cate's proposal. That's a substitute amendment and would strike out Mr. Kelleher's words, "an odd-number". Is there debate on Mr. Skari's substitute?

Mr. Arbanas.

**DELEGATE ARBANAS:** I would like to oppose the amendment. It seems to me that we're getting right back into that sort of hide-bound legislative—of tying this down for all generations. Looking at the language of Mr. Cate's proposal, I think it can be solved very, very simply by putting after the words, "which shall be balanced geographically and politically"—"they shall select their own chairman"—which would take care of the odd number; it would take care of the problem that balancing which is the Legislature appointing these people geographically and politically balanced and then they would select their own Chairman agreed by whatever members. But the amendment as proposed seems to be to lock in a system that, you know, in many years to come may hold back the process.

**CHAIRMAN GRAYBILL:** All right, the issue arises—

Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, perhaps to clarify that, on line 8, by adding, "by a majority of one". This would be politically and geographically by a majority of one.

**CHAIRMAN GRAYBILL:** All right, that might do it and that might be in order later, or are you making an amendment to Mr. Skari's—

**DELEGATE BATES:** I will make an amendment.

**CHAIRMAN GRAYBILL:** Pardon?

**DELEGATE BATES:** I move to amend.

**CHAIRMAN GRAYBILL:** All right, we can have one amendment to the substitute amendment. Now the issue arises on Mrs. Bates' amendment. Mrs. Bates' amendment would add—Mrs. Bates, are you adding that to Mr. Cate's language?

**DELEGATE BATES:** On the end of line 8.

**CHAIRMAN GRAYBILL:** Yes, well you can't do that since the issue now is Mr. Skari's language which is in the majority proposal, so I'll rule your motion out of order at the present time, Mrs. Bates. The issue arises then on Mr. Skari's motion that we take out the second sentence of the first paragraph of Mr. Cate's proposal the sentence that says: "The legislature shall designate the membership of the commission and shall be balanced geographically and politically." We strike that and put in place of it the language out of the majority and minority proposals as follows: "The majority and minority leaders of the legislature shall each designate two commissioners." Then a sentence about bicameral, which would stay in. And then, "The four commissioners within 20 days after their designation shall select the fifth member who shall serve as the chairman. If the four members fail to select the fifth, then the Supreme Court shall appoint the chairman." Now, so—Mr. Blaylock, for what purpose do you arise?

**DELEGATE BLAYLOCK:** I was—

**CHAIRMAN GRAYBILL:** Do you want to debate it again?

**DELEGATE BLAYLOCK:** Yes. Well, I just want to say that I want to support Mr. Skari's amendment. I think that we all have to remember here that we're dealing with the most fundamental thing that can happen to this Legislature when, if this Constitution is adopted, and if we appoint two and two, that very easily those people could sit there and never be able to come up with that fifth person. This because—it's fundamental to the State of Montana how this—with the power that we've given this commission—that they be able to set up some kind of a commission that will work. And it may very well have to go to a body like the Supreme Court to appoint that fifth member. I support Mr. Skari's amendment.

**CHAIRMAN GRAYBILL:** Is there any need for the Chair to restate the motion?

(No response)

**CHAIRMAN GRAYBILL:** All right. So many as shall be in favor of Mr. Skari's substitute motion, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (No audible response)

**CHAIRMAN GRAYBILL:** The Ayes have it and so ordered. Now that wipes out Mr. Kelleher's amendment and we're back on the basic proposition of Section 15. Is there—

Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I move to add to line 14, after "shall",—let's see—"within 30 days after submission to the legislature shall enact a plan or return the plan to the commission." Just those three words, "enact a plan or"—it's four words actually.

**CHAIRMAN GRAYBILL:** (Inaudible)... would you please repeat where that goes?

**DELEGATE BATES:** Okay.

**CHAIRMAN GRAYBILL:** You're on Mr. Cate's proposal now, on line 14.

**DELEGATE BATES:** On line 14.

**CHAIRMAN GRAYBILL:** All right, and what do you want to do?

**DELEGATE BATES:** After "shall", include the words, "enact a plan or", and then go on with "return the plan to the commission for its recommendation."

**CHAIRMAN GRAYBILL:** All right, that has the effect—now so that you understand what Mrs. Bates is doing—Mrs. Bates has made a proposal here that we amend Mr. Cate's line 14—or 15, Mrs. Bates?

**DELEGATE BATES:** 14.

**CHAIRMAN GRAYBILL:** Well, read it to me again. I've got it in the wrong place, I guess.

**DELEGATE BATES:** On line 13.

**CHAIRMAN GRAYBILL:** I see. All right, I have it.

**DELEGATE BATES:** "Within 30 days after the submission to the legislature shall return the plan"—oh, wait a minute, I've got that—

**CHAIRMAN GRAYBILL:** "—shall enact a plan—"

**DELEGATE BATES:** "—shall enact a plan or return the plan to the commission."

**CHAIRMAN GRAYBILL:** Now, do I understand it to be the sense of your motion that if we put in the words, "shall enact a plan", that they have the power to enact the plan?

**DELEGATE BATES:** (No audible response. Mike not on.)

**CHAIRMAN GRAYBILL:** All right, Mrs. Bates' amendment then would have the effect, in line 14, of changing Mr. Cate's proposal back to Proposal Number 2 by Mr. Nutting. I just want you to know—(Laughter) Well, I just want you to know what it does. I think she has the right to make that amendment. It has the effect of giving the Legislature an absolute right to enact a plan, which was the substance of the minority report. Now, with that understanding, we'll debate Mrs. Bates' amendment. All right, members of the committee, the issue then—pardon? I see. Mrs. Robinson, excuse me, I didn't see you.

**DELEGATE ROBINSON:** I would like to rise in opposition to this amendment. She mentioned just putting in three little words. These three little words opens up the minority report that we put down before we took a recess this morning. I would urge you—we have gone over this and gone over this and these three words has the full impact of opening the thing right back to where we started, and I strongly urge you to resist this amendment.

**CHAIRMAN GRAYBILL:** Mrs. Bates, do you really need to close?

**DELEGATE BATES:** No, but I just wanted to point out the point that we have already gone back to the majority plan in enacting the structure so therefore I feel that we could also amend this to include the voice of the legislators. Thank you.

**CHAIRMAN GRAYBILL:** Very well. Is there other discussion?

(No response)

**CHAIRMAN GRAYBILL:** Very well, the issue arises on Mrs. Bates' amendment to line 14 of Mr. Cate's Section 15, subsection 2, so that it would read—Well, we'll get to that. "Within 30 days after the submission to it the legislature shall—" and then she adds the words, "enact a plan or return the plan to the commission with its recommendations for change." We'll have a roll call vote. So many as shall be in favor of the amendment, vote Aye; so many as shall be opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** We'll close the vote. Will you please take the vote?

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Absent |
| Bugbee | Nay |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |

| | |
|---|---|
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Aye |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill-Chairman | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Nay |
| James | Absent |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Absent |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Nay |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Absent |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CHAIRMAN GRAYBILL:** Would the clerk please announce the vote?

**CLERK SMITH:** Mr. President, 66 voting No; 26 voting Aye.

**CHAIRMAN GRAYBILL:** 66 having voted No, Mrs. Bates' amendment fails. Is there other discussion on Rule 15, on Mr. Cate's proposal Number 15—Section 15?

(No response)

**CHAIRMAN GRAYBILL:** If not, members of the committee, you have before you Section 15 of the Legislative proposal as amended, and Mr. Cate's recommendation that when this body rise and report, the same shall be adopted. So many as shall be in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it and 15 is adopted.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** For the members, we'll start again at 1:30 sharp today. I move we recess until 1:30 this day.

**CHAIRMAN GRAYBILL:** The motion is made to recess until 1:30 sharp. All in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** Ayes have it.

(Convention recessed at 12:05 p.m.—reconvened at 1:41 p.m.)

**CHAIRMAN GRAYBILL:** Just before lunch, ladies and gentlemen, we finished up Article XV which came from the unicameral majority proposal. Mr. Johnson had an amendment to Article XV of the bicameral majority proposal. Mr. Johnson, is it your intention now to attempt to amend or do you want to amend Mr. Cate's majority proposal that's been adopted for unicameral?

Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman. Thank you, yes, that's what I would like to do. You'll find—

**CHAIRMAN GRAYBILL:** All right, would you like the clerk to read your amendment?

**DELEGATE JOHNSON:** If you please.

**CHAIRMAN GRAYBILL:** Will the clerk please read the amendment?

**CLERK SMITH:** "Mr. President, I move to amend Section 15, subsection 1, page 36, line 30, Legislative Committee proposal by striking line 30 on page 37, lines 1, 2, 3 and line 4 through the word, 'senator', and inserting in lieu thereof the following words and punctuation: 'the state shall be divided into as many senatorial districts as there shall be members of the Senate and each district shall elect one senator'. 'Each senate district shall also serve as a house district for the election of two members of the house of representatives; each district may be divided into single member house districts as prescribed by law.' Signed, Johnson."

**CHAIRMAN GRAYBILL:** All right. It's the understanding of the Chair that Mr. Johnson's amendment would apply—Mr. Johnson, you could make that apply to Mr. Cate's proposal by putting it at the end of subsection 2 or else at the end of subsection 1.

**UNIDENTIFIED DELEGATE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Just a minute. Do you intend that to be at the end of subsection 1, is that right?

**DELEGATE JOHNSON:** (Inaudible)... sir.

**CHAIRMAN GRAYBILL:** Very well. Subsection 1 was adopted for the unicameral and applies to Mr. Cate's amendment. Mr. Cate's was subsection 2; so, going back to subsection 1, we would add these sentences right to the end of it and it—

**DELEGATE JOHNSON:** Mr. Chairman, I think it would practically be a substitution for subsection 1, wouldn't it?

**CHAIRMAN GRAYBILL:** It would be a substitution for all of subsection 15-1, is that right?

**DELEGATE JOHNSON:** Yes, I think that would be it.

**CHAIRMAN GRAYBILL:** Right. Section 15-1, I think was the same in the majority and the minority proposals, or the two majority proposals. No, it was slightly different in the other. So, the point is to turn to page 36 and in place of Section 15-1, we would put in Mr. Johnson's language in the bicameral majority proposal if we adopt it. Otherwise, we'll have to consider Section 15-1. (Inaudible discussion) All right, I think I have the sense of Mr. Johnson's motion now. It would be to—now Mr. Johnson, I think the problem is that we're probably out of sequence. Mr. Cate, do you want to move Section 15-1, at the bottom of page 36 as the bicameral majority proposal on Section 15-1, and having done that, we'll let Mr. Johnson amend it.

**DELEGATE CATE:** (Inaudible)...move.

**CHAIRMAN GRAYBILL:** All right. On page 36, Section 15, districting and apportionment subsection 1, has now been moved by the majority. And now Mr. Johnson comes in with his amendment the substance of which is to strike everything from the beginning down to the last sentence and in place of the last sentence—so that the section would read: "The state shall be divided into as many districts as there are representatives of the house and each district shall elect one representative. Each senate district shall be comprised of two representative districts for the election of one senator. Every legislative district shall consist of compact and contiguous territories and be so nearly equal in population as is practical." That's the majority proposal. Now, Mr. Johnson's proposal is: "The state shall be divided into as many senatorial districts as there are members of the Senate and each district shall elect one senator. Each senate district shall also serve as a house district for the election of two members of the house of representatives. Each district may be divided into single member house districts as prescribed by law. Every legislative district shall consist of compact and contiguous territories." So now, we're ready to debate Mr. Johnson's amendment.

Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman. In support of this amendment, I would like to point out that Dr. Taylor from Montana State University, when he appeared before our committee one time, showed us that Montana was geographically and population-wise very nicely situated to divide into approximately 50 districts—would be the easiest way, the easiest number to use; either maybe two less or maybe two more. I'd like to use the number 50 and 100, if I may, for clarification. He showed that—well, the rest of this will be my argument, I guess. If you divide into 50 senatorial districts, which is much easier than 100, and have one senator from each district and then there will be two house members from each district. This will give you a multimember district of two. If the people, or the Legislature, wish to divide, it is much easier to divide a small district, like a senatorial district, into two other districts into an intricate line drawn through there whether it divides a city or a small town or a geographical or natural barrier. It's a local problem that's much easier solved. There'd be 50 individual problems instead of one great big problem of dividing the whole state into 100 single member districts. So, since this is a much easier method to approach our division, I move that you adopt this amendment.

**CHAIRMAN GRAYBILL:** Mr. Johnson, may I ask you one question? You say in the second paragraph, "each district may be divided into single member districts." Now, we've already passed the single member district proposal so shouldn't we change "may" to "shall"?

**DELEGATE JOHNSON:** Yes, Mr. President, I think that that's in order.

**CHAIRMAN GRAYBILL:** Unless I hear objection from the floor, we'll allow Mr. Johnson to amend that word. Is there objection? Mr. Cate.

**DELEGATE CATE:** Chairman, that's not his intent. That's not Mr. Johnson's intent.

**CHAIRMAN GRAYBILL:** Well. I—

**DELEGATE CATE:** What he's saying there, Mr. Chairman, is—what he proposes is this—that the state be divided into 50 senatorial districts.

**CHAIRMAN GRAYBILL:** Right.

**DELEGATE CATE:** And then there be two representatives from each of those districts. They would run at large within that senatorial district and then he's adding that if the Legislature wants to provide a method, that each one of those senatorial districts can be divided into two separate house districts.

**CHAIRMAN GRAYBILL:** I see and I understand. Now, maybe I could explain it this way. Is this correct, Mr. Johnson? Section 15-1, which we adopted yesterday for single member districts applies to the unicameral situation. Now, in a bicameral situation, Mr. Johnson is saying that we would set up single member senatorial districts and we could either run the legislators two up in a district or one up in a district as we decided. And that's why you used the word "may", is that right, Mr. Johnson?

**DELEGATE JOHNSON:** Yes.

**CHAIRMAN GRAYBILL:** Very well. I understand the sense of your proposal now. All right, now, is there further debate on Mr. Johnson's amendment?

Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, members of the Committee. I think that the issue of single member districts has been pretty well resolved and accepted by this Convention and I'm sorry to see the issue come up again. In any event, I would like to point out to you that there was no minority committee report in favor of this proposition; that in effect what you're doing here is making single districts 50 percent. You're cutting it in half. You're cutting all the things that favor single member districts in half and then there is a question about the locality. One man, one vote, means what it says. And in the last sentence where he has, "each district may be divided into single member districts as prescribed by law", if a county—or let's say one district decided to do that and there were 5,000 citizens or voters in that district and they divided it in half, each representative from that district then would represent 2,500 people rather than 5,000, and he would be out of proportion with the rest of the state because in all the other districts in the state, the representative would represent 5,000. And if you follow that line of reasoning, you would have a unconstitutional provision because it would not apply to one man, one vote. And if I haven't adequately explained that, I would be willing to attempt to do so in more detail. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman. In looking over the North Dakota Constitution, they are submitting a proposal in their new constitution for one senator and at least two representatives who can be elected at large. Also, they go on to add later that no more than four representatives can be elected from one district. In looking at other constitutions, several of them state not more than two to come from any one district or not more than three from any one district. And I'm certain, in talking to several people, that this would be constitutional. I support this amendment because I feel that this body is looking for some flexibility. One of the things that will be coming up later is the qualifications. Must they live in a district or can they live outside of the district? By having two representatives running in a senatorial district—now, in a large district, this could be divided into all single member representative districts; but in cities and towns, I can see where this would provide some flexibility for people that are just living across the street, and I think it probably also would be an aid to future legislators. If they see that at some time single member districts are not the solution to all the problems that we have, and perhaps two-member districts would be a better situation, it would be possible for them to do this. So, I recommend this do pass.

**CHAIRMAN GRAYBILL:** Mr. Delaney.

**DELEGATE DELANEY:** I wish to resist this motion. I think one particular instance we can call here—call to attention is that Mr. Ask and Mr. Belcher—they came from a large district; they live in the city of Roundup right across the street from each other. I think that you're defeating the purposes of the single member district if you take this proposal or this amendment. I very strongly resist it.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Would Mr. Johnson yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Johnson.

**DELEGATE JOHNSON:** I yield.

**DELEGATE HARBAUGH:** Did you accept the proposed change of "may" to "shall"?

**DELEGATE JOHNSON:** Yes.

**CHAIRMAN GRAYBILL:** No. Well, Mr. Johnson, I didn't change that because I didn't understand it. Though we still may.

**DELEGATE JOHNSON:** No, I guess I didn't either.

**DELEGATE HARBAUGH:** One more question then, it stands as "may" then?

**CHAIRMAN GRAYBILL:** Yes, it stands as "may".

**DELEGATE HARBAUGH:** Are you presuming that there would be twice the number of representatives in the House as the Senate in your proposal?

**DELEGATE JOHNSON:** Exactly.

**DELEGATE HARBAUGH:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman. As I understand it, it's expected by the committee that the two proposals, the one for the one house and one for the two house Legislature, are going to be submitted to the electors on a ballot if this house approves of that type of thing. If we give two proposals here which have got different aspects contained in them besides the number of the houses, it seems to me that we're loading the question so far as the voters are concerned. The voters are then going to be given a chance by voting for the two house proposal to vote against single member districts. We're not going to be able to find out whether the voters want one house or two house Legislature; we're going to find out whether they're willing to go along with the one man, one vote rule in this state or not. And it seems to me that it would be a mistake for us to let a question like this go to them.

**CHAIRMAN GRAYBILL:** Is there further discussion?
Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President. I move that we strike the word "may", and insert the word "shall".

**CHAIRMAN GRAYBILL:** Very well. It's been proposed that we strike the word "may", and insert the word "shall", as amendment by Mr. Blaylock in Mr. Johnson's amendment. This has the effect of saying that each district shall be divided into single member districts as prescribed by law. So many as shall be in favor of Mr. Blaylock's amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** I'll put the question again. So many as shall be in favor of Mr. Blaylock's amendment, which has the effect of writing single member districts into this bicameral part, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** Okay, the Ayes have it. Is there further discussion on Mr. Johnson's amendment?
Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman. I would like to close if there's no more discussion.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE JOHNSON:** Since the delegation just now voted to change the word from "may" to "shall", then we necessarily would have single member districts. I can live with this, too, very easily, and still maintain that this is a more efficient way of reapportioning—redistricting our state. I'm under the impression that the people who have used their computers and done a lot of research and work in this area in the last few years, are of the opinion that approximately 50 districts is the easiest way to redistrict Montana. As I said a while ago, and I must repeat, that to divide each senatorial district into two single member districts would be handled very easily and this is just about all I have to say on the area. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Members of the committee and Mr. Chairman, I'd like to point out that now with that amendment, you have essentially the same thing. I think we ought to stay with the majority language. Thank you.

**CHAIRMAN GRAYBILL:** Very well. The question will be on Mr. Johnson's amendment. Now, so that everybody understands this situation, Mr. Cate's proposal—we have three alternatives really again. Mr. Cate's proposal this morning, Section 15, sub. 2, in conjunction with—now, just a minute until I finish talking—I may be wrong; I'm going to check it out here. Section 15, sub. 1, of the unicameral proposal sets forth a way in which—it says, "for the purpose of electing members to the legislature, the state shall be divided into as many districts as there shall be members of the legislature. Each legislative district shall consist of compact and contiguous territory and shall be so nearly equal in proportion as practicable." Then—so we shouldn't consider the Cate's. We have two possibilities. And the one of them is that the bicameral majority proposal starts with the representative districts and works up to senatorial districts by combining two representative districts whereas the Johnson amendment starts with senatorial districts and divides them in half to get representative districts. As near as I can see, that's all the difference between them now that we have "single member" written into both of them. So the question is whether you want to start with the senatorial or start with the representative. Does anyone have a question on that?
Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I'm not certain which "shall" and which "may" we were talking about because there are two in that last paragraph of his amendment that was passed out.

**CHAIRMAN GRAYBILL:** No, Mr. Johnson's amendment—let me read Mr. Johnson's amendment since that's what we're going to vote on. For Section 15, sub. 1, he would say: "The state shall be divided into as many senatorial districts as there shall be members of the Senate. Each district shall elect one senator." Then in the second paragraph, "each senate district shall also serve as a house district for the election of two members of the house of representatives. Each district shall be divided into single member districts as prescribed by law."

**DELEGATE BATES:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** I had changed the one in the first line of that and that's why I was wondering what was going on.

**CHAIRMAN GRAYBILL:** I don't see any "mays" in the first line, but maybe I don't read it right. We have now voted, Mrs. Bates, to have single member districts in Mr. Johnson's proposal as I understand it.

Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. Chairman. When we start to vote on this, now we have adopted Mr. Cate's proposal for the unicameral this morning, is that right?

**CHAIRMAN GRAYBILL:** Right.

**DELEGATE BLAYLOCK:** All right. Now in voting on Mr. Johnson's this is what we're going to put into the bicameral, is that right?

**CHAIRMAN GRAYBILL:** It's the first paragraph of the bicameral, right.

**DELEGATE BLAYLOCK:** All right.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Yes, Mr. Chairman, delegates. I would like to speak in opposition to Mr. Johnson's amendment and in favor of the majority proposal. And I'll try very clearly to tell you the difference here. After talking to Dr. Waldron and several others who have worked on reapportioning this state, while it may be in some instances easier to divide the state into 50 districts rather than 100, superficially that's true; but he indicated that when you try to break those 50 districts down into two, it's harder to get within a variance. It was 3 percent this last time. If you can only deal with two boundaries, it's harder to get within the variance. He indicated it's much easier if you start with 100 districts and then you can combine any two of those to get your senatorial district. That way, you are dealing with four boundary lines rather than two as you would have to be dealing with under Mr. Johnson's proposal.

**CHAIRMAN GRAYBILL:** Is there other discussion? Very well. We're voting on Mr. Johnson's amendment that we divide the state into senatorial districts which would then be broken down into representative, single member districts. So many as shall be in favor of Mr. Johnson's amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as are opposed, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and it's defeated. All right, the consideration is now on Section 15, sub. 1, in the majority bicameral proposal on page 36 which provides for dividing the state into representative districts and doubling them up for senatorial districts. Is there further discussion? If not, so many as are in favor of the majority proposal in the bicameral side for Section 15-1, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** As many as are opposed, say No.

(No response)

**CHAIRMAN GRAYBILL:** That's adopted. Now this morning when we adopted Mr. Cate's amendment, we adopted certain language for section—subsection—out of subsection 2 that says, "the majority and minority leaders of the legislature shall designate two commissioners". Then we adopted this language, "(bicameral, the majority and minority leaders of each house shall designate a commissioner.)" So, it would seem to me that we could adopt Mr. Cate's proposal as amended this morning as the balance of Section 15 in the bicameral section. Mrs. Bates, would you move that or Mr. Aasheim would you move that?

**DELEGATE AASHEIM:** I think Mr. Cate should probably move it but since—I move—I'm on page 50.

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE AASHEIM:** That I move to delete Section 2, 3, 4, 5 and 6 from the majority bicameral report and insert in lieu thereof the proposal or the wording as given by Mr. Cate and as amended this morning.

**CHAIRMAN GRAYBILL:** That's right. And you do, I suppose, say that if when we arise that we shall—

**DELEGATE AASHEIM:** I move that when we arise and report after having had under consideration this section, the same do pass.

**CHAIRMAN GRAYBILL:** Very well. Now, the proposal has been made to write the Cate subsection 2 that we passed this morning in as the subsection 2 for the bicameral districting and apportionment section. Is there any further discussion? If not, all in favor of the motion say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's passed. Now with that, the Chair thinks that we have completed the bicameral sections because Section 13, which is the veto, has been dropped and moved to executive and Section 16, which was the ombudsman, has been deleted in its entirety. Therefore, I think we're ready to go back on the unicameral majority report, Section 1. Originally, it's on page 3 of the booklet, the comments on page 11. And the Chair will ask the clerk to read Section 1 of the unicameral Legislative article on page 3.

**CLERK SMITH:** "Section 1: Power and Structure. The legislative power of the state is vested in the legislature, consisting of one chamber whose members are designated senators. The people reserve to themselves the power of initiative and referendum." Section 1, Mr. President.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman. I move when this committee does arise and report after having had under consideration Section 1 of Proposal Number 3, that it recommend the same be adopted. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** As our Chairman of the Legislative Committee, Magnus Aasheim, told us when we started working on our Legislative article, it was the feeling of the members of this committee that both unicameral and an improved bicameral proposal be submitted to the voters of the state. Now, the majority of the members of the committee do support a unicameral, but we agree completely that this matter should be settled by the voters. Now before I get into the justification of the unicameral, I would mention that in both the unicameral and bicameral proposal, the people reserved to themselves the power of initiative and referendum. And I feel that this is a needed check whether we have unicameral or bicameral. It's interesting to note that only 14 other states have this initiative and referendum, and I feel that in addition to judicial review and the executive veto, that is this is a check that the people of Montana want. Another area that I think is not too controversial—we selected the term senators for the members of a unicameral body. If you ask me why, I don't know; maybe because it has a certain dignity. We think that it's a little easier to use than assemblymen or legislators and one of the members on my committee said that he thought we used the term senators so we could influence a few of the current senators to support unicameralism. Now, to get into the reasons for our unicameral support; that is the majority of the committee support. On behalf of the committee, I would like to list a few of the reasons. There are many more but I want to take about 5 minutes of your valuable time. We, the majority of the committee, believe a unicameral Legislature would insure accountability. Each legislator would be more accountable to his constituents because there is no buck-passing, bills cannot be introduced and passed in one house on the assumption that they will be killed in the other. Each legislator must carefully consider his actions because there is no other house to blame. Nebraska ranked number one in accountability in the impartial survey conducted by the citizens' committee on state Legislatures. We believe a one house Legislature would fix responsibility. We need a Legislature that is responsive to the needs of a modern society. We need a Legislature that is able to more effectively use the resources available to us, such as federal programs. We need a Legislature that is not paralyzed by political bickering. In the last seven sessions of the Legislature, Montana had a House of one political party and a Senate of another, resulting in repeated political deadlock. We need a Legislature that can deal with legislation in a straightforward fashion and will not allow the duplication of bills either inadvertently, because of confusion or lack of communication, or deliberate duplication for the express purpose of killing a bill or altering it beyond recognition. I have several examples where that happened in recent sessions but I will not go into them now. We believe a one house Legislature would increase efficiency. A unicameral body improves the consideration that each bill receives. There is less confusion. Dual committees are eliminated and it is unnecessary to have two public hearings on a bill. People who wish to testify will travel to Helena just once instead of on two different occasions. In one chamber, a sponsor can follow a bill through with information and support without losing track of it in the other house. We believe a one house Legislature would assure better rural representation. Within a unicameral body with single member districts which we just decided upon, each legislator will be more responsive to his rural constituents. Each legislator in a 100 member body would now represent 7,000 individuals. The rural representation in one house would not be diluted by larger Senate districts that are weighted in favor of urban centers. We believe a unicameral would reduce costs. Money is saved simply through the reduction in number of members with the attendant elimination of duplication in staff, printing and other operating expenses. The money saved could be used for research, the single most important factor in insuring intellectual independence so legislators will depend less on lobbyists for help. We believe a unicameral will reduce the power of special interest lobbys. In a unicameral body of 100, 51 legislators would constitute a majority for control. In a Senate of 50, as we now have, only 26 senators mean control. In the all-powerful conference committee, which we discussed at some length this morning, which consists of three members from each house to settle differences between them, only three individuals can mean control. The current bicameral structure is generally preferred by lobbyists for accessibility. Finally, we believe that the conference committee should be eliminated. Now this morning, we won one convert in our committee to unicameralism simply because the proposal that he made to improve the conference committee structure went down, and so now we have more members of the Legislative Committee who are definitely in support of unicameral. I didn't vote on that issue because my conscience got me. Under no other circumstances in government is so much power invested in so few individuals. That is that notorious conference committee. In 1969, the six-man conference committee had ultimate control over 51 important bills. In the unicameral, as we said this morning, there is no need for any conference committee. Consequently, responsibility is spread among all the legislators. I will agree with Chairman Aasheim that there will be consultations, there will be agreements, but there will not be conference committees. The most commonly asked question concerning a unicameral Legislature is, why haven't more states adopted it, if it's so effective? Tradition is difficult to shake; innovations are difficult to introduce. The last Montana Constitutional Convention in 1889 thought women should not have the right to vote. I wonder how that would go over today here. (Applause and Laughter) Yet, today 18-year olds are voting citizens; which attests to the fact that perhaps we are ready for change. Another factor—the unicameral idea has not been pushed in most other states and yet, today, we all have copies of the North Dakota Constitutional Proposal, and you'll notice that their first alternative on their ballot is the bicameral-unicameral issue. However, in many other recent constitutional conventions, this was not considered because legislators served as delegates. And I feel that if legislators had been allowed to serve in this body, we would not now be discussing unicameralism as a serious issue. The most—now—I feel that since the historic one man, one vote decision in 1964, which ordered both houses of state legislatures to be based on population, the rationale for maintaining two houses no longer exists. However, as I said before, we can't expect the legislators themselves to eliminate one of their houses and at least 50 of their seats. If—now, when Nebraska obtained unicameral in 1934, it was the result of a constitutional amendment. The depression and economic factors in that state influenced the voters to listen to Senator Norris, who barnstormed the state for unicameralism. I understand 400 of the state's papers at that time were against the issue, and yet the people voted it in. When they tried to change it, the people have voted to retain it. I don't feel, though, that Nebraska's unicameral system is perfect—far from it; I feel we could improve it greatly. For one thing, with our strong two party system in Montana, we must have a partisan Legislature. This Constitutional Convention should give the voters of Montana a choice. It's time that we stopped partitioning our legislative needs between two houses as a device for advocating our responsibility. We, the entire Legislative Committee, believe it is our obligation, our responsibility, and our duty at this Convention to allow every citizen of Montana the choice of a unicameral or a bicameral Legislature. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Section 1 of the unicameral proposal of Article V is before you.

Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman. I moved to substitute for Section 1, just given by Mrs. Reichert, Sections 1, 2, 3, 4 and 5 of the proposal that I distributed last week, and I believe the clerk has a copy. I wonder if the clerk would be so kind as to read those five sections.

**CHAIRMAN GRAYBILL:** Yes, the clerk will read this and this is Mr. Kelleher's parliamentary system, if you can find it on your desks so you can follow. The clerk will read Sections 1 through 5 of the substitute motion.

**CLERK SMITH:** Section 1—

**CHAIRMAN GRAYBILL:** Just the italicized part, Mr. Clerk.

**CLERK SMITH:** "The legislative power of the state is vested in the assembly, consisting of one chamber whose members are designated senators. The people reserve to themselves the power of initiative and referendum. Section 1. Section 2: Executive. The leader of the party which has the greatest number of seats in the assembly shall be declared governor. The assistant leader of that party shall be declared lieutenant governor. Section 2. Section 3: Selection of Leaders. The leaders and assistant leader of any political party shall be chosen by a direct primary election or by convention or as otherwise provided by law. Section 3. Section 4: Cabinet. The Governor shall assume the executive authority and shall provide for the proper administration of the laws of the state. He shall appoint a cabinet who shall assist him. Section 4. Section 5: Dissolution. Subsection A: At any time during an assembly session, the governor may call for the dissolution of the assembly. Upon a majority vote pursuant to this call, the legislature shall be dissolved and new elections shall be held according to the law. Subsection B: At any time during an assembly session, a majority of the members of the assembly may call for his dissolution. Upon a two-thirds vote pursuant to this call, the assembly shall be dissolved and new elections shall be held according to law."

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, I move that when this committee does arise and report after having had under consideration the sections just read by the clerk, that they recommend the same do pass. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** On the first section, my fellow delegates, you will note in the first minority report that I used the word "parliament". I've now substituted the word, "assembly". One of the principal reasons for that was that I had made so many changes in the original parliamentary system to wit, very frequent elections. Under the British and Canadian system, they originally had elections every 7 years; now they have them every 5 years. Under my proposal, we would have elections every 2 years. This is nothing novel with me. It was—you'll note that on page 14 of the majority report, I merely absorbed their Section 3. Senators shall be elected for a term of 4 years. One-half of the senators shall be elected every 2 years. In this way, every 2 years, if half of the assembly would be up for reelection, and if the people of the state did not like the way the direction of ship of state was moving, they could change it. The checks and balances, those hell words from our friend Mr. Montesquieu, in his spirit of the laws in 1748, are now, instead of being between the Governor and the Legislature, they're between the Legislature and the people. Every 2 years, by voting, the people could change their government. If the people like the way the ship of state is moving, all they do is reelect the encumbent senators that are up for reelection every 2 years. If they don't like the way the ship of state is moving, they defeat them and put the opposition party into office. At that time, the opposition party would assume the position of the chief executive and they would—by the people by their action would change the chief executive. This is highly democratic, very responsive democracy. For instance, we recently have seen here in the Capitol, dispute between the State Board of Health and the Governor on matter of pollution controls. The State Board of Health enacted pollution controls which were much higher, as you know, than those enacted by the federal government. The Governor disagreed with the State Board of Health. Now, as a delegate, I'm not going to take an official position on this dispute. All I'm concerned about is the machinery of government, which is what we're concerned about, of course, in writing this Constitution. If this had been a parliamentary body or a body as I proposed where the executive is the leader of the majority in this chamber, the Governor could be called into this chamber during a question-and-answer period. He'd have 2 or 3 days' notice in writing of the questions that would be put to him; together with his ministers or cabinet heads or department heads, whatever you wish to call them, that were in anywise connected with the matter of pollution controls. And every member of this chamber—we are now, if you will, imagine yourself as members of the Legislature rather than of the Con Con. Every member in this chamber could ask each one of those ministers or department heads and the Governor, any questions that they wished. Now, if the Governor satisfied all of your questions and objections, then you would just let the matter stand as it was. If, however, a minister or the Governor did not come up with the right answers—let's take the case of the minister of the department head; the minister is the department head, you know—if you did not like the answers of the department head—a majority of you—you could vote to censure him. And down he would come, and he would come back into this chamber whence he came to head a job as a department head, and you would put him back in his seat and then the Governor would have to get himself a new department head. And then, you would go on to the Governor, and if the Governor did not come up with the right answers, ladies and gentlemen, you could ask for a vote of confidence. And if you wanted to bring him down, you could get yourself a new Governor. Now, I submit that this is real democracy. This is very responsive democracy. This is, if you will, instant democracy. Now, let's go one step further. Before you bring the Governor down, you realize, of course, that he is the head of your party, and you realize that when you go back to the elections—to the people, that the Governor does not go alone. That's the name of this little game; you go back with him. So, it better be something that's very, very serious, something of the utmost importance, before you would go that far. I merely give this as an example to let you know the power that would be in this body; and that is all we are talking about at this Convention is the power of the people. You'll remember when Larry Margolis was here, the executive secretary of the Citizens' Conference on State Legislatures—he said that this body is not representative of the people, but that this body is the people. Now, think about that for a moment. If you accede to that thesis that this body is the people of Montana, then I submit that before you put any control on this body, that you better have a pretty good reason for doing so. When Ramsey McDonald took office in 1923, he was defining the program of his new ministry, of his new government, and he discussed this matter of how—on what type of a matter you would vote on a vote of no confidence. I have a lively recollection of all sorts of ingenuities practiced by oppositions in order to bring a snap division upon the government so that it might be turned out on a defeat. I have known bathrooms downstairs utilized not for legitimate purposes, whatever those are, but for the illegitimate purpose of packing as many members surreptitiously inside their doors as their physical limitations would allow. I have known an adjourning [adjoining] building where there happens to be a convenient division bell used for similar purposes. I have seen this house practically empty when the bells began to ring, and then turned into a riotous sort of marketplace by the inrush of members for the purpose of finding the government napping and turning it out upon a stupid issue. I am not going out upon any such issue, so have no fear that we're going to be having elections every 2 years. A person who's a member of this Legislature under my proposal, would not be in any particular hurry unless it was a matter of great import to himself return to the voters. He said later, "Nowadays, a member of the majority party in the house will hesitate long before voting against his party leaders. He has no desire to turn out his own party and so bring in the opposition, perhaps thereby losing his seat and the salary attaching thereto. Nor does he wish to incur the expense and undergo the labor of an election. Also at stake are the interests of the 22 members of the cabinet, with 30 or more other party officials dependent for status and salary on the continued existence of the cabinet. They have strong motive to exert all the influence they can to stave off dissolution." I quote those sentences only to show you that dissolution is not something that comes on very suddenly. And lest anybody fear that we would be changing governments rather rapidly, I ask you to look to our Canadian cousins to the north in Alberta; I just found out last week that one of the reasons why the labor party—I mean the conservative party—which just won the elections last fall was so apprehensive about taking over power was that this is the first time in

36 years that they've been in power in Alberta. Apparently, the party that was in power was doing a satisfactory job for some 36 years. So the fact that you do have a very responsive type of government, responsive to the wishes and desires of the people, does not mean that you're going to be changing your government every other day. If you were Governor, which would you rather have? A guaranteed working majority, or the veto power? Think about that. You've got to make some decisions during this week and next about the power of the Governor. The veto power is like a string that you can pull at but you cannot push. Mrs. Reichert pointed out that in the last—what was it—last seven sessions, there's been a disparity between the House and the Senate as to political affiliation. I believe—it's my personal opinion that very likely our state is going to become unicameral, at least from what I hear in my own county of Yellowstone. What if the new, very powerful Legislature—I want it to have the utmost power because it is the people—is unicameral and it is of a party opposite the Governor's party? Since we came into the Union, 71 percent of the time the Governor of this state has been of a party other than at least one member of the Legislature. Looking at it from the Governor's standpoint, to take an instant—a current example, let's go to Washington for a moment. There are at least a half-dozen United States senators, all of my party and all great and honorable men, who are seeking the office of the presidency of the United States. During this, an election year, what are the possibilities, or at least, what are the pressures upon these men to give President Nixon a program that will be of benefit to the people? These great senators, first of all you must remember are partisan politicians and their job as partisan politicians, when the occupant at 1600 Pennsylvania Avenue is of the opposite political party, is to first bring him down and then we'll start worrying about the people's business. I think it is time that we Americans stop playing this childish game of who is the leader and begin to take care of the people's business. And the best way to do that is by guaranteeing that the chief executive of the State of Montana will always have a working majority in this body—in this hall. David Patrick Moynihan, former assistant to President Nixon, said that "The federal government is very expert at collecting revenues and very poor at dispersing services." Charles Schultze was director of the Bureau of the Budget under President Johnson said that "Only the federal government can take care of national defense and put a man on the moon. As far as education, pollution, manpower, poverty, welfare, health and urban renewal are concerned, only the states can handle these problems." And I publicly admit that as a liberal democrat, that not all the answers are in Washington, in fact, as I get older I realize more and more that very few of the solutions to our problems are to be found in the nation's Capitol. Someone has said that if we did not have the states as administrative divisions, we would have to create them. Our Legislature cannot handle a budget of several hundred million dollars a year with the shackles of the present Constitution. My proposal would provide a modern streamlined and efficient form of government for Montana. Because it is different, it has been called by the editor of one daily newspaper, "a return to Toryism." Another editorial writer has defined it as a "alien political culture". This form of government that is so alien to our shores was responsible in 1215 for the Magna Carta. I have here in my hand part one, volume one—all of you lawyers know what it is,—the Revised Codes of Montana. The first document in this book is not the Constitution of the United States or even the Declaration of Independence; rather the first document in that volume of our laws starts out, "John, by the grace of God, King of England, Lord of Ireland" and goes on to say, "we also have granted to all of the free men of our kingdom, for us and for our heirs forever, all the underwritten liberties to be had and holden by them and their heirs, of us and our heirs forever." The Declaration of Independence is the next document in our laws. And the first three reasons why we went to war with Great Britain almost two centuries ago, was because the king had the veto power over our Legislatures. Each province of our Canadian cousins on our northern border has never used any other form of government. President Wilson favored it. Seventy-five percent of the presidents of the American Political Science Association since that time have also favored it. So did the conservative, William Howard Taft. This "return to Toryism" is exactly the form of government we are using in this great hall. This "alien" form of government is the type of government we are using to write a new Constitution for Montana. Moreover, if the counties had revolted only some 10 years later, we would now have this type of government in the Congress of the United States, and the President of the United States would always be of the majority party in the Congress. Professor Walgren in his article on the Legislature, which I'm sure all of you read, you will recall, said

that "lobbyists and incumbent senators favored a present bicameral or two house legislature." Elimination of one house will reduce the effectiveness of lobbyists, who would only have two chances to kill a bill rather than one. However, my proposal would do away—mind you—would do away with the greatest weapon of the lobbyist, the gubernatorial veto. We have elected our own President and our own leadership, and our President cannot hide out in a Governor's palace. He is responsive to us; he is part of us. Imagine for a moment, if after we finished our document, that we would take it over to that other chamber, across the hall, and they would tear it apart with scissors and pastepot, hold hearings and rewrite the whole thing. That is abhorrent to us, but imagine further with me if you will, that not only after we wrote it, that our President could veto it and we had to pass every provision with two-thirds majority; the way we've been voting, we'd be here for a long time—try to get those two-thirds majority. The eyes of our state are on you now and you are governing yourselves with the best possible form of government. You are rightfully proud of the job you are doing. Our Con Con system is the best form of government. I urge you not to be selfish; share our system with the people of Montana. To the yeah-buts, those who agree with me but say, "Yes, it's a good system Kelleher but...," to the yeah-buts, I can only say, "Have confidence in the people of Montana." Our people come from the best school system in the United States. Our children are so bright that in national tests, our scores go off the top of the charts. Our people want a change. In 1968, by a vote of over 40,000, they said they did not like the present system; they refused to give the present bicameral chambers an extension from 60 days to 80 days. When the Legislature went back to the people and said, "All right people, do you want to rewrite the whole business and start a whole new ball game?" the people of this state by a two-to-one majority said, "Yes, we want a whole new ball game." A one house Legislature is a baby's step in the right direction and I support it. It will save money; it will give better representation to rural areas; it will reduce the influence of lobbyists; it will be more accountable and more representative of the will of the people. However, it will not stop the feuding and the buck-passing between the Legislature and the Governor. And 1 year, Mr. Babcock, you will recall, vetoed 20 bills. I'm not going into the merits of whether he was right or wrong; and that's none [of] my business as a delegate, but could you imagine the inumerable hours of time in committee, of research, of government heads of the State of Montana that came over here to testify, and all of that time was wasted. Finally, if you give the Governor a majority, you will have taken a giant step; and I ask you to take that giant step. And, in conclusion, I say that our Legislature would be so powerful that we'll be able to annex the State of North Dakota. Thank you, Mr. Chairman. (Laughter and Applause)

**CHAIRMAN GRAYBILL:** Discussion is on Mr. Kelleher's substitute amendment.

Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman. I rise in support of my friend, Mr. Kelleher. I think he gave a marvelous presentation of the parliament. I am very much in favor of the part where he said we could be governed by Toryism. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President. I make a motion to a substitute motion to delete Sections 1, 2, 3, 4 and 5 of the parliamentary proposal that is now before you.

**CHAIRMAN GRAYBILL:** Do I understand you want to make such a substitute motion?

**DELEGATE DAVIS:** I want to move to delete it.

**CHAIRMAN GRAYBILL:** You want to move to delete it. It would seem to me that it would be useless to make a motion to delete it. You'd just have to just reverse the vote. Is there a reason you want to do that? In other words, we have before us Mr. Kelleher's proposal and if you don't like it, vote against it; and if you do, vote for it.

Mr. Loendorf.

**DELEGATE LOENDORF:** A point of order, Mr. Chairman. I'm confused. Mr. Kelleher's proposed amendment is not part of the report and I wonder what we'd be deleting it from.

**CHAIRMAN GRAYBILL:** Oh, let's review the situation, Mr. Loendorf. Mrs. Reichert moved Section 1 of the unicameral majority report; Mr. Aasheim made a substitute motion that in place of Section 1, you place his Sections 1, 2, 3, 4 and 5. Mr. Davis proposed deleting Section 1, 2, 3, 4 and 5. My point was, that there's no point in making a motion to delete everything. You might just as well vote against it. It's a useless extra motion. Do you understand me, Mr. Loendorf? Are you with me?

**DELEGATE LOENDORF:** I believe so. I think I agree with you.

**CHAIRMAN GRAYBILL:** Okay, thank you. So, we're ready to continue debate. Mr. Romney would like to debate.

**DELEGATE ROMNEY:** Mr. Chairman, I first want to say that I congratulate Delegate Kelleher upon his moving statement concerning the parliamentary venture. I don't know but what the majority of the people in this body probably agree in their hearts with him. They're like the exponents of a recent candidate for the presidency of the United States—and I don't mean McClosky—in their—in your hearts, you know he's right. However, there—he has presented a choice to the people of Montana and I think that that is why we're seated here in this Convention. When we were elected to these—our seats in this Convention, we were elected to do the best that we could to present a parliamentary, a bicameral, or a unicameral, or such other type of government as would best serve the interest and uses of the people of Montana. For a number of days now, we have been discussing the unicameral and the bicameral systems. Delegate Kelleher has provided an excellent exposition of the reasons why we should now have a parliamentary system. I know that there are squawkers who will reject this philosophy but those squawkers fail to recognize that most of the nations of the world do use this type of government—of the provinces of Canada to the north, all excepting Quebec, use this system. The Dominion uses it, Great Britain uses it, New Zealand uses it, the Australian provinces use it and most of the nations on the continent in Europe use it. The fact that other nations use it is no more prime reason why we should accept it than the fact that Nebraska has a unicameral and no other state in the union has a unicameral system. Those sort of things do not provide answers. But as Delegate Kelleher has said, it provides—the parliamentary system will provide a system whereby many advantages not now available to the people of Montana, could be garnered. For example, if we had the parliamentary system, we would not have this Constitutional Convention. We would not now be engaged in this debate about whether we should have a bicameral or a unicameral system in Montana. We would not now be turning to anything that we ran up against that seemed difficult of obtaining an answer to. We would not be handing it over as to be handled by a commission or a committee, or being turned over as provided by law to the next session of the Legislature. If you had a parliamentary system, you'd have to grapple with the situation that faced you, and you'd have to decide it. We would not be deciding about all of these things that are now facing this group, and which we must somehow or other determine. It would be determined on the floor of your House of Parliament, which would probably be right here. For example, there would be no Constitution; it would be an unwritten Constitution which is part of the laws of the State of Montana just as the Constitution of the United Kingdom is a group of unwritten laws—of written laws of the United Kingdom. So, there are many things to consider here and I know that you will all weigh your votes carefully before you cast them on this.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman. In looking at these two proposals, there is a great deal of merit in Mr. Kelleher's proposal. I prefer a two-body system, however, but I can see the parliamentary procedure proposal as being more responsive to the people, because I think it could control the king-makers of a one-body. We here are in a one-body system. I feel we would've come out with a better Constitution had we had a two-body system. This morning I called the Secretary of State in the State of Nebraska. I got quite a lot of material. Their system, as far as the unicameral is, is far from perfect. They will have 16 constitutional amendments on their ballot at the primary election. They will have 10 or 12 in the general election this fall. They met for 165 days in the 1969 session at a cost of $614,289.00. In 1969, they had 1440 bills submitted. Of these, 858 were passed. This is one of the reasons I have heard for a unicameral system; we wouldn't have as many bills. They also have the referendum and the initiative. They have 49 legislators which they call senators. Two will not be running again; therefore, they are reapportioning according—their entire state—because these two will not be running again. So, there is much gerrymandering going there too. They met in 1941 for 99 days. Each year, they've extended until they were running 165 days. This year—or last year, for the first time—it was in 1968 that they had a constitutional amendment for annual sessions. They will meet 90 legislative days in the odd year and now they are meeting 60 days. They receive a salary of $4,800 annually. I really don't believe this is the type of system, but I would prefer the parliamentary system because I think it's more responsive than a unicameral body.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** (Inaudible)... like—I would just like to say, Mr. Chairman, that several countries in Europe have a parliamentary system and they do have written Constitutions. We could have a written Constitution. It's not a condicio sine qua nomen. You could have a written Constitution with our parliamentary system. I wonder whether Delegate Felt would yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** I yield.

**DELEGATE KELLEHER:** Mr. Felt, I understand you've been in England. I wonder if you could tell us a few words how the question-and-answer period works in parliament over there.

**DELEGATE FELT:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** Delegate Kelleher and other delegates. It did occur in 1959 through the American Embassy. I was able to get tickets to attend on this—what they call their question-and-answer day. It's rather difficult to get in there because it's a very popular day. Somehow they became confused and thought that Representative Felt was a Congressman of the United States so he ended up with a ticket. And these are samples of the questions. I thought they might be of interest and I dug them out of my old records. There were 60 questions in all prepared in writing. They're screened by a government agency so that they can't deal with something that might endanger the national security. But they lead on then to impromptu questions. All parliamentary procedure as we know it and as they know it, is thrown out the window on that day. You know how the thing is shaped with the two sides facing each other in the well, a narrow table with the leaders sitting opposite each other. And when they become aroused, I'll guarantee you, their noses come right together across that table. But, here are some samples. There was a question by Sir Robert Camel to ask the Secretary of State for the home department if, in order to avoid undesirable exhibitionism and demonstration by a minority of the public on the occasion of the hanging of a murderer, he will insure that in future all hanging shall be done in secret and if he will make a statement. And a Mr. Dennis Healy to ask the Prime Minister if he will propose a meeting with the heads of the government of the United States of America and the Union of Soviet Socialist Republics to discuss the conclusion of a treaty banning nuclear test explosions. Mr. Arthur Lewis to ask the Prime Minister why he will not appoint an independent committee to investigate and report on all matters leading up to the cause of and matters connected with the reasons for Great Britain's sudden withdrawal from the Suez campaign. Perhaps the question that aroused the most interest and the reason why a lot of the people were there, was one asked by a Mr. Hector Hughes to ask the Prime Minister if he is yet in the position to announce the result of his consideration of the bequest of the late Sir Hugh Lane of pictures now housed in London galleries, and to make a statement of the government's present policy with regard to their destination. Some American millionaires were trying to buy the paintings and there was more interest in that than there was in the nuclear tests or anything else. (Laughter) The fact that the leaders of government must appear in this manner, I'm sure, has a bearing upon who will be candidates of their respective parties or groups for the positions of head of state; and it has intrigued me at times to consider what would happen in Montana or in our national Congress, if a similar procedure was developed and used, regardless of how we selected the head of our state or national government. And I would like to say that I would like to join in the sentiments expressed by Delegate Romney that it's a very commendable thing that this subject has been brought up before us, and that it has been handled in a very proper manner, and that it does merit the consideration of this body and of the people of Montana.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman I have a little good news and I have a little bad news. The good news is that we're about to recess until 3:15 p.m. The bad news is that if we don't finish today, we're going to be here tonight. I move we recess until 3:15 p.m.

**CHAIRMAN GRAYBILL:** Motion is to recess until 3:15 p.m. All in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

(Convention recessed at 3:00 p.m.—reconvened at 3:20 p.m.)

**CHAIRMAN GRAYBILL:** The committee will be in session. Please take your seats. The issue is on Mr. Kelleher's substitute motion to substitute Sections 1, 2, 3, 4 and 5 of his parliamentary proposal for Section 1 of the unicameral proposal. Is there further discussion? Mr. Kelleher do you want to close?
Mr. Rygg.

**DELEGATE RYGG:** I find myself in some kind of an odd situation. I thought Kelleher's proposal was just a lot of nonsense but after he's spoken so eloquently about it, I think I would prefer the parliamentary system to the unicameral, and I think I'm going to vote for it.

**CHAIRMAN GRAYBILL:** Mr. Vermillion.

**DELEGATE VERMILLION:** Mr. Chairman, I think we owe Mr. Kelleher a vote of thanks for bringing this topic to this Convention's attention because, of course, we are given the responsibility to consider the possibility of a different form of government of some kind for the State of Montana, certainly to review all the possibilities. And I think one of the things about Mr. Kelleher's proposal that has not been emphasized, I think, enough, but one that we should direct our attention to, is the business of the selection of leaders. Now of course, under our present system in this state and in the nation, the selection of leaders is on a once-every-4-year basis and once a man has been defeated, he more or less sits on the sidelines and his ability to contribute is somewhat lessened. And I think over the period of history, there may have been occasions when we have lost some very able men who might have been able to contribute again. And I think of names. Perhaps you've seen the little badge I've been wearing the last couple of weeks. It might have been under a form of government which Mr. Kelleher proposes, that William Jennings Bryan might have had an opportunity to lead our government at some time or another, not merely following the loss of an election. Maybe a man like Wendel Wilkie might have had another opportunity, or somebody like Adlai Stevenson. Maybe you have somebody in mind who you were very much in favor of at one time and who you may feel the electorate was mistaken in defeating at the polls, either in the state or national scene. And I think under Mr. Kelleher's proposal, some of these very able people who were not given the opportunity to serve their country or their state, might have had another opportunity, and I think we should consider very carefully this proposal. It might give an opportunity for some very able people to further serve their state and their country.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** Mr. Chairman or Mr. President. I wish to speak for a minute on the parliamentary type of government as proposed by Kelleher. It's possibly the most economical and efficient. It's really the most responsive to the people. My next oldest brother was a member of the Parliament in Canada for 8 years at Ottawa as a member from Saskatchewan. And I had occasion to discuss his being a member up there for years, and we were comparing the type of government they had as compared to ours. His only comment was that they certainly liked their form of government. He couldn't see how he could improve on it and he didn't know very much about ours. But, I'm very much impressed with Kelleher's talk to us this morning, and I'm for his type of government.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman. Since nobody has arisen to raise any objections to the parliamentary type of government, I would like to suggest one or two that occurs to me. For one thing, I do not think we ought to equate parliament with unicameral—or one-house Legislature under our system—because it embraces a complete change in regard to the matter of checks and balances between three branches as we now have it. Really amalgamating the executive and the legislative into one, setting the judiciary off on the side of being an agency that functions only in terms of court cases that clearly do not involve any political ramifications. Let's take another look at it, just as a matter of argument since we insist on debating this. In our Legislature, we do have one majority party at present and one minority party, but there are many instances where they work together. A legislator can come here from either party and still consider himself to be a legislator for the State of Montana and a functioning part of it. Let's put the case—51 percent Republicans and 49 percent Democrats. The parliamentary procedure or the parliamentary type government automatically disenfranchises the 49 percent of the elected representatives of the people. Their only business here in this house, as has been stated, is to find ways to bring the other 51 percent down. They cannot cross over the line to vote with the majority without strengthening the hand of the majority that they're dedicated to oppose, nor can the majority ever cross over to join with minority in a vote against their leader without the possibility of bringing their whole house of cards down upon themselves. In a very real sense, the minority for the period of time until a new election—in a sense, they're not really effective legislators at all. A second point that maybe we ought to consider. A man might be elected from his single-member district as a legislator and he may be a good one. He may be the leader of his party, in a sense, when they get into the legislative hall. He may not necessarily be a good Governor. We have an opportunity, under our system, to vote for a man to be Governor, and we vote for him particularly for that job. We do not leave it to chance that the majority group, the 51 percent, choose one of their members who then becomes what they hope to be an effective Governor. Furthermore, the ministers under this system come from the house. They are members of the house. They have been elected as legislators. Now they end up being Secretary of Agriculture, Secretary of Labor, ministers for various functional departments of the bureaucracy of the state, and they may not necessarily be the best persons. All of these people having to stand together sounds as if it makes one responsible unit; that's true. But in a good many places, you do not come up with an efficient-type government, nor even a responsible one. In some cases, you either stand for a period of years with delicately balanced party positions, that is in terms of numbers of voters in each party, and a rather unstable situation. Or, as happened in Alberta, go into an entrenched position with one party who stay for so long that it's almost impossible, and takes an almost traumatic experience for a province or a state to get them out. There is something to be said for the checks and balances set up by the framers of our original Constitution in the United States. There were some reasons for setting up our kind of government, and since we are giving this other a full airing, I think possibly a word ought to be said for the kind of system that we have. Now as a supporter of the original motion which happens to be on unicameral, I would support it also in terms of bicameral, but particularly unicameral now. We get some of this responsiveness without having to take all the rest of what I think of as not too desirable elements of this parliamentary procedure along with it.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman. I listened with a great deal of awe at the speech made by the distinguished delegate from Billings. He made a splendid talk, but I just wonder how many of us would be here today if we'd have gone out, outside the distinguished gentleman from Billings, and campaigned that we were going to throw out our entire type of government in this Constitutional Convention. I just wonder how many would've been here today.

**CHAIRMAN GRAYBILL:** Very well. The issue—

Mr. Nutting.

**DELEGATE NUTTING:** (Inaudible). I have just one comment to make. Montana has a very strong two party system, and our system naturally operates under the very close vote, a very close margin between the two parties. Now, past history has demonstrated that a split between the two houses and the Governor is very common. Now, there's no reason to expect that this won't continue in the future. Now, consider if you will, that under a unicameral system that does not have a two-thirds majority in the single house, there is really no place to negotiate. They cannot override; neither can they negotiate unless they allow the Governor into their negotiations at all times. This is not too different from the situation as it was in 1965, when as has been stated, 21 bills were vetoed. There was no place for negotiation. That's also the same situation in our national Congress now. I believe that definitely the Parliament does have an advantage in this situation where you have the Governor and the body of the same political party, over the unicameral where you do not have anyplace to negotiate differences with a difference in situations.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. President. I think we're all proud of Kelleher but if I may paraphrase, "We did not come to bury Kelleher, only to bury his proposal with vocal tributes." (Laughter)

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Kelleher's proposal that we substitute his Section 1, 2, 3, 4 and 5 for Section 1 of the proposal. Mr. Kelleher, do you really feel you need to close?

**DELEGATE KELLEHER:** Mr. Chairman, just a few items, if I may. I know we want to get on, but it might pass, Leo, you never know. (Laughter) If you give me a little more time, I have—we'll get the votes. Seriously, could I comment on what Delegate Harper has raised?

**CHAIRMAN GRAYBILL:** You may close, Mr. Kelleher.

**DELEGATE KELLEHER:** That's what I was going to do. Thank you, Mr. Chairman. (Laughter) First of all, because the nominee does not run for Governor, you know in advance who the Governor is going to be; you know in advance who the Lieutenant Governor is going to be because they're all picked the way the Legislature wants to, either by primary or by convention or a mixture. That's in the provision here; there's no problem. The people know in advance. The thing is instead of voting for a fellow because he has blue eyes or he's a good speaker or, say, because she's a beautiful lady, they vote for the platform, for a certain tax, against a certain tax, for new roads or to repairing the old roads. Now, regarding the matter of checks and balances, I've spoken here about that before. Checks and balances came to us from Alexander Hamilton and John Adams, mostly Adams, and God, I'd like to bury him. And he got them from Montesquieu in 1748. Now, Montesquieu said there were three forms of government: the despotic form of government, the republican form of government and a monarchial form of government. Now, which form of government did Montesquieu like and prefer? We all know that he preferred the monarchy and we all know what the Baron De Montesquieu said about a republic, which is the kind of government we got here. He said "It's a body without a head", because Montesquieu didn't feel that common men—and that's what I submit that we are, is common men—that we were incapable of governing ourselves. That's where checks and balances came from and division of powers. And under my proposal, the checks and balances are with the people. How democratic can you get. Now, this veto power that we have; where did it come from? It came from a guy named Elbridge Gerry. Did you every hear of "gerrymandering"? He's the guy that gave gerrymandering its name. He was at the Convention in 1787; he later became Governor of the State of Massachusetts—the Commonwealth of Massachusetts. In 1806, March 18th or something, is where we get the word "gerrymandering", after he signed the bill regarding the way the general court—that's the general assembly in Massachusetts—was set up. And you know how many votes he carried it by in the federal convention? Four to three, out of thirteen. Four to three that the President should have a veto power. Now, as far as all the opposition not having any say-so, those of you who were legislators in this chamber there's some 14 or so—you know what it was like when you were the opposition. It's no different in the parliamentary form. You probably have more say-so because you don't need to worry about a veto. Mr. Heath just lost 15 votes on a recent vote, I believe, on the EEC. His majority was down to 308 to 301. Well, he's getting kind of close but that just proves that the opposition can have something to say. They have a lot more to say in a parliamentary form of government than they do here with the Governor. The king is elected for 4 years and you can't get him out except by impeachment. Ministers, we know in advance who the ministers are—who's going to be Superintendent of Public Instruction, who's going to be Attorney General. Mr. Chairman, I want to thank you and all my fellow delegates for your patience. In conclusion, the people who sent you here, sent us here to write the best possible document. The people trusted you. June 6th, I ask you to trust the people. We have bright people; we have an intelligent people; we have instant means of communication and you don't need to be a PhD in political science to understand this system. All it says is that the Governor has to be of the same political party as the majority party. And our people will buy it; just give them the chance. Thank you.

**CHAIRMAN GRAYBILL:** We'll have a recorded roll call vote on this issue. All those in favor of Mr. Kelleher's parliamentary system, please vote Aye. All opposed, please vote No. Have all the delegates voted? Does any delegate wish to change his vote? Does any delegate wish to change his vote? Please record the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |

| | |
|---|---|
| Ask | Nay |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Absent |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Absent |
| Harlow | Absent |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Absent |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Aye |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CHAIRMAN GRAYBILL:** Mrs. Warden?

**DELEGATE WARDEN:** (Inaudible)...no.

**CHAIRMAN GRAYBILL:** You want to vote No?

**DELEGATE WARDEN:** Please.

**CHAIRMAN GRAYBILL:** Is Mrs. Warden recorded as No?

**CLERK SMITH:** Yes.

**CHAIRMAN GRAYBILL:** You're recorded as No, Mrs. Warden. Would the clerk please announce the vote?

**CLERK SMITH:** Mr. President, 19 voting Aye, 74 voting No.

**CHAIRMAN GRAYBILL:** 19 having voted Aye, 74 having voted No, the parliamentary system is defeated. Now, the Chair has been requested to explain where we are before we proceed. If you'll all listen carefully, I think we can get this straight. The first day we debated Legislative, we voted to put a dual proposal to the Style and Drafting Committee who will consider it, and perhaps will recommend a ballot form. Therefore, it behooves us to have the best unicameral and the best bicameral system possible. Therefore, we set aside Sections 1, 2 and 3 to debate at the end and we are now on Section 1 of the unicameral and the point is, we should all choose the best unicameral system we can and the best bicameral. Therefore, we will consider Sections 1, 2 and 3 of the unicameral. We will then consider Sections 1, 2 and 3 of the bicameral and we will send them all to Style and Drafting. Since we voted to send this as a dual proposal to the Style and Drafting Committee, the Chair will not entertain motions to delete either the unicameral or the bicameral system. So, if you have amendments, they will have to be—the Chair will rule them out of order unless they are simply changes, and if you try to eliminate one of the systems, then you're going to be ruled out of order. Now, we're on Mrs. Reichert's motion that we adopt Section 1 of the unicameral.
Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. President and members of the assembly. I know we are short of time but the bicameral people have not had their day in court and since we had such an excellent presentation by Mrs. Reichert on the unicameral, I'm not going to oppose her suggestions. I just want to present some friendly reasons...(Inaudible).

**CHAIRMAN GRAYBILL:** Mr. Aasheim, the Chair is going to rule that when we get to Bicameral Proposal Number 1, you may present the reasons for the bicameral proposal. I don't think they should be presented now. We're debating whether or not Section 1 is a proper unicameral proposal. As soon as we've finish 1, 2 and 3, we'll go to bicameral 1, 2 and 3 and I'll ask you, or whomever you designate, to give all the reasons for the bicameral. Is that clear?

**DELEGATE AASHEIM:** Well I will accede to your request, Mr. President, but I was going to challenge some of the statements she made. But, since you request it, I will accede.

**CHAIRMAN GRAYBILL:** You certainly are free to challenge her statements and make any statement in favor of the bicameral system you want to at the time we discuss the bicameral articles. We're now discussing the unicameral articles. Is there any further discussion on Section 1?
Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. Chairman, would Mrs. Reichert yield to a question?

**CHAIRMAN GRAYBILL:** Mrs. Reichert?

**DELEGATE REICHERT:** I shall.

**DELEGATE ERDMANN:** My only reservation about the unicameral system has not really been explained to me. Is there any safeguard that would prevent hasty, ill-conceived legislation from being rushed through under the unicameral system?

**DELEGATE REICHERT:** Thank you for that question, Mrs. Erdmann. I'll try to take as little time as possible. A bill is run through much the same process that we now use in our house the first time. After a 5-day period, the bill is then run through the same process again. This gives the citizens a chance to study a bill during this period, and if they want to change it or kill it, they can. After this, of course, it is subject to approval or veto by the Governor. I do have 13 explicit steps spelled out. Another member of our Legislative Committee and I called the clerk of the Nebraska Legislature and we asked him just what provision they use to safeguard legislation. And he said that there were several factors: Number one, the wide distribution of bills. Every time a bill is printed, it's distributed not only within the chamber, not only within the Capitol, but throughout the state. And I've found through my experience in viewing the Legislature, the mistakes are found not by the legislators by themselves, but by the people who are concerned with the specific legislation. And two, they have something that we do not have and that is a bill drafter. Since 1937, an average of 562 bills have been introduced in each session and every bill had to pass the standards of a bill drafter. And this bill drafter takes care of so many technicalities that we've overlooked in our bicameral system over the years. They check not only for constitutionality, but this business we discussed yesterday, the title provision, the subject provision. And they haven't had nearly the trouble we have with hasty legislation; and if we have a chance to get into it, I'm armed with all sorts of statistics about specific legislation that really suffered at the hands of our bicameral system.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you on the recommendation of—

Mrs. Speer.

**DELEGATE SPEER:** Mr. President. I wish to speak in support of the majority proposal, Section Number 1. I believe that it is a more efficient system. The figures quoted by Delegate Grace Bates, I think represent 1 year, and a rather unusual year probably, because as Delegate Reichert has said, since 1937, the average number of bills has been 562 introduced in each annual session. A study of the Nebraska Legislature in 1957 found that the number of bills introduced in the Nebraska unicameral Legislature was 40 percent less than the average number introduced in the bicameral Legislature. And of those introduced, 20 percent more reached final passage. Furthermore, the study found that in the last week, there were only two or three bills, major bills, that were left for consideration. I think this is evidence of efficiency under the unicameral system.Thank you.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman. Aren't we getting off the path a little? I thought we were going to debate the merits of the sections rather than the systems.

**CHAIRMAN GRAYBILL:** I'm trying to limit debate to that but I've hesitated to overrule anyone that wanted to speak. Members of the committee, you have before you for your consideration on the motion of Mrs. Reichert, that when this committee does arise and report after having under consideration Section 1 of the unicameral portion of Article V of the Legislative proposal, that it recommend the same be adopted. So many as are in favor of that motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it and so ordered. Will the clerk read Section 2?

**CLERK SMITH:** "Section 2. Size. The number of senators shall be prescribed by law but there shall be no less than 75 and no more than 100 members." Section 2, Mr. President.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman, this is not my section.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman. When this committee does arise and report after having had under consideration Section 2 of the majority unicameral proposal, I recommend that the same do pass. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Two issues—and we're talking practical matters now when we talk about the size of a legislative body—our committee sees two issues. One is how to make a body of an effective, efficient size and, on the other hand, how to make a body that is really representative of the people back home. There's no question in anybody's mind that size helps to determine the effectiveness and the efficiency of any deliberative body. And our contention is that Montana's 150 is needlessly large today. Fewer members guarantee more individual participation, more thorough deliberation and communication. Fewer members in the Legislature means we may have stronger staffing, better compensation and better working facilities for the same or less price. In terms of efficiency of operation, I think there is no doubt in anyone's mind that a smaller body can work better. The real question today is the matter of representation. Several facts came to our attention. One is that since 1889, there have been some changes made in communication and transportation. Today, the Capitol is as close to your house and your county as the telephone; closer by transportation actually, than the county seat was 50 years ago. There's another fact. The people of Montana are represented by the whole Legislature. Most of the matters the Legislature deals with effect the entire state, not just single localities. Only by an efficient Legislature, can any one area be well represented. An overly large, inefficient Legislature represents any area poorly even if you chose people in that local area a representative for every square mile. Now, we've decided on single member districts. With single member districts, we have districts small enough to be very representative and still have a legislative body small enough to be efficient and economical. The committee looked at the size of Legislatures in other western states. Let me simply review some of them. Arizona has a total of 90: has 60 in the House, 30 in their Senate; New Mexico has 112: 70 in the House, 42 in the Senate; Colorado has a total of 100: 65, 35; California has a total of 120: 80 in the House, 40 in the Senate; Oregon has a total of 90: divided 60 and 30; Alaska, the newest state and much larger in terms of area than ours, has a total of 60: 40 in the House, 20 in the Senate. Average all the western states, these and others I did not read, and the average is 60½ members in the House and 30½ members in the Senate. Now, think in terms of the number of people each representative represents. In New Mexico, the ratio is 1 to every 9,187 voters. In California, in 1960, it's worse now, 1 for every 155,041 people. The average in the United States, incidentally, taking in all Legislatures, large and small, is 1 to every 25,000 persons. In Montana, if you have 100 people in a legislative, unicameral body, you would have roughly 1 to 7,000. So, the smaller body still gives a much better representation than any of these other states that we've named. Nebraska's unicameral body has been mentioned; they have 49 and they like it very much. Now, a large question for Montana and a practical one, how can we have adequate representation for our rural areas? And sometimes people mean by this, how can we have enough rural votes to be sure that the urban votes don't outweigh us? And an honest answer is, with unicameral or bicameral, we can't. A Legislature of 50 or 100 or 150 or 500 will carry exactly the same proportion. But districting does affect the urban-rural proportion. As of now, for example, we have 23 large multiple districts. Rural areas are lumped together with each other in enormous areas or else with some urban center in order to get a sufficient body count. For example, Broadwater and Jefferson County thrown in with Helena and you can go to the people of Broadwater and Jefferson Counties and say, "Look, you guys get to vote for four representatives and two senators—much better represented." They're smart enough to look at the situation and say, "Yes, but they maybe all come from Helena." They'd rather have one person who lives among us than the six who really represent an urban situation. And city folks, now that we have single member districts, can have each of their districts too more representative. So our committee believes that the unicameral body of 75 to 100—75 the minimum, 100 maximum—from single member districts would be adequate and representative. Seven thousand people in each district represents actually less than 2,000 family units, and any legislator will have an excellent chance to get to know personally his constituents and they personally will get to know him. Why put a minimum and why put a maximum? Well, if you'll look at a map—not the present map, but a single member district map of 100 in your mind—then you will see what kind of advantages for representation this will give. We think 75 should be put in as a minimum figure simply because in the future, we don't want it to go below that figure of representation. We put 100 in as maximum because we think that's a maximum number in terms of efficiency, still retaining representation. One last issue, but it is an issue, and I would say we in the Constitutional Convention ought not to forget that it's a real issue, this issue of economy. Now we say that such a small percentage of the total state budget goes into the Legislature that a few hundred thousand dollars doesn't make much difference, but when you're talking to the guy who's running the filling station or standing by her kitchen sink, three-quarters of a million dollars is a lot of money. You contrast 100 people as against 150 people—for example, for 110 days in a biennium as we have just had—and you take that 50 difference between 100 and 150, multiply the per diem and salary even at a low figure of say $2,750 a year, and almost a half million dollars is automatically saved. Mrs. Bates said that the last session 165 days in Nebraska, cost over $600,000. For 106 days, the last session in Montana, cost $1,562,101.29. Senator Norris campaigned on the idea of save time, talk, and money and the people of Montana, will understand that as well as the people of Nebraska did.

**CHAIRMAN GRAYBILL:** Mr. Foster has an amendment. Will the clerk please read it?

**CLERK SMITH:** "Mr. President, I move to amend Section 2, page 3, lines 13 and 14 of the Legislative Committee proposal by striking the following words and figures, '75 and no more than 100', and inserting in lieu thereof the following words and figures, '90 and no more than 104.' Signed, Foster."

**CHAIRMAN GRAYBILL:** Mr. Foster's amendment changes the figures from 75 to 100 to 90 to 104. Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, fellow delegates. In drafting my amendment, I have attempted to bring the positions of the minority report for the bicameral of the Legislative proposal together with the majority report of the unicameral. The arguments that I will make are essentially the same arguments that have been made in the body of the proposal by the Legislative Committee. I do not take issue with them, but rather I draw them to your attention. In the majority report, on page 12, line 28, I quote, "in a unicameral body of 100, 51 legislators would constitute a majority to pass a bill." It's indicated that this would make it difficult for lobbyists to control. I submit that in the amendment I have proposed; in fact, this magic number of 100 is essentially the midpoint of my amendment. Also, in the majority report, on page 11, line 15, I quote, "in a unicameral legislature, unlike a bicameral legislature, rural district representation is not counterbalanced by larger senate districts that are stacked in favor of urban centers. In large districts, rural areas are thrown into districts with urban areas." I submit that this is also a very good argument for retaining the number essentially at 100. The minority proposal 2, page 54, line 8 states the same numbers in reverse and the house of not more than 104 nor less than 90 members. This is essentially the source from which I drew the magic numbers of 90 and 104, drawing upon the wisdom of the members of the minority and the Legislative Committee. I have no personal infatuation with 90 and 104, but I do feel that it should be in the area of 100 and not in the area of 75. I continue to quote from the minority report on page 54. "If Montana is to maintain a citizen legislature, it must have an adequate number of members to insure a broad base of experience and expertise in all of the fields of state government. A small legislature with large staff becomes a bureaucracy where the staff governs the legislature and the people have lost the last vintage of control over their government. Size is a compromise with existing facilities. While it is our feeling that perhaps no limit should be placed on size by the Constitution, this is a figure 45, 52 and 90 and 104 which could be reasonably adjusted to give adequate representation to the sparsely populated rural areas. An elected, informed citizen legislature is much more reflective of the will of the people than a small, bureaucratic, staff-dominated assembly. True representation should never be sacrified for the sake of efficiency and expedience." I concur completely in these comments and again feel that the average size of 100 is necessary to meet these objectives. Finally, in the majority report, page 13, line 27, I quote, "Montana is a large state with scattered population." The committee believes that a unicameral Legislature needs 75 to 100 members to allow the state's rural areas to retain a feeling of representation. The committee also believes that a unicameral Legislature of this size allows Montana to preserve its traditional low ratio between a representative and his constituents. The provision provides a range to give the reapportionment commission some flexibility in redistricting and reapportioning the state. I submit that this argument directs itself primarily to the upper edge of the proposal, the 100 members, and I feel very strongly that Montana, in relating itself to the other states in western United States as George Harper has indicated, in the area of roughly 100 representatives, can certainly do no wrong by retaining the size of the legislative body in the area of 90 to 104. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there discussion of Mr. Foster's amendment?

Mr. Davis.

**DELEGATE DAVIS:** Mr. President. I would like to make a substitute motion for the motions that are now pending as follows: "Section 2, Size. The number of senators shall be prescribed by law but there shall be not less than 100 members."

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President, fellow delegates. First, I know of nothing in the rules that state that statements of the delegates should be limited to criticism of our mutual activities. And I should, at this time, like to compliment the Legislative Committee for their very thorough complete report and, further commend them that putting both reports out in a majority form rather than trying to force one view or the other, or persuade one view or another, and trying to submit this to place it on the ballot.

**CHAIRMAN GRAYBILL:** Mr. Davis, the Chair has the duty to try and get this thing discussed so I will hear discussion on your amendment, but I don't think I want to hear discussion on the criticism of the committee one way or the other. So, if you want to discuss your amendment, you're in order.

**DELEGATE DAVIS:** Mr. President. You permitted a gentleman behind me to speak for about an hour. This probably concerns our area and 47 of the counties of this state which have a minority of the population, more than anything that has come up yet on this floor. May I proceed, Mr. President.

**CHAIRMAN GRAYBILL:** If you're going to discuss your amendment you may, yes, sir.

**DELEGATE DAVIS:** Now, we've accomplished a lot in these articles today. We've given an expanded right to vote; we've expanded the eligibility to hold office; we've freed the Legislature from the 60-day continuous session; we've adopted a single member district to make elected representatives more responsive to the electorate, and now we've crossed the very important question of how you're going to apportion, but none of these are going to be very meaningful to the rural areas unless they have someone that they can vote for that comes from that area. And I submit that 100 is a very minimum that we should strive for in a bicameral Senate or in a unicameral Senate or bicameral House in order to try to bring the greatest amount of harmony between the cities and the rural areas. It is a political fact of life that six or seven cities in this state have the vote and they have the power, and it won't change regardless of how your figures are except the more you reduce your numbers, the less opportunity the rural areas have to be represented. And that is true if you do not put a minimum floor. The next house or any other house can reduce to a lower number, expand the rural areas, lump them onto a city and cut down the vote in the rural areas. The one man, one vote premise, as you all know, has quite a few fallacies in it at the best. If you have an important issue in Great Falls and go to your delegation there, you have 1 man, 12 votes or in Billings 1-12, or in Butte 1-4 or 6, or with Anaconda 8. In the small rural areas, you're lucky to have 1. However, I believe we all desire to allow the rural areas more than a feeling of representation, as is set forth in the comments to the committee's proposal on page 13. And I feel certain that the committee did not mean that it merely wanted to give the rural areas a feeling of representation; we must give them real representation and any number less than 100 will fail to achieve the goal that we've strived for throughout. This chain reaction—we're now to the place where we determine the numbers. Now, Mrs. Erdmann yesterday in speaking of the unicameral, referred to Article V, Section 3 spoke a majority of 51, Mrs. Reichert in her excellent article in Sunday's Great Falls Tribune, stated it's more difficult for lobbyists to control a unicameral body of 100 because 51 individuals constitute a majority passing a bill. We have been thinking in the terms of 51 and of 100 rather, as appeared here on the floor and in the press. The flexibility is allowed by your reapportioning the districts, however, they want to reapportion them, and with an increase in numbers on the upward side. As you probably remember, both Billings and Missoula had less than 1,000 people when the last Constitution was adopted. And finally, it would appear that a very compelling reason for taking the 100 figure is that three federal judges in that famous case where Delegate Blaylock was one of the plaintiffs and the Governor and Secretary of State were defendants, has ruled that this present body of 100 is constitutionally permissible. Now yesterday we heard, and today, how many Legislatures had failed to pass the court test when they reapportioned themselves. But this decision holds that we have now in this body 100 and it is constitutionally permissible. We've passed the important thing of single member districts which was one of the reasons for appeal on that and the federal court judges of Browning, Smith, and Jamison said regarding single member districts. This was a decision that should be made by the Legislative Assembly or the forthcoming Constitutional Convention. We have accomplished the single member district and I think the real test of this whole Convention. And how it's going to work and how fairly you want it to work is how fairly we're going to work in harmony between the cities and between the rural areas; between the 7 counties that control the population; between the other 47 counties that are in a minority; they're going to continue to become in more of a minority. But this is where we need to really give some serious thought to harmony and I suggest a minimum of 100 will achieve that goal. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Discussion will be on Mr. Davis' substitute amendment that not less than 100 members be the size of the unicameral.

Mr. Champoux.

**DELEGATE CHAMPOUX:** The only thing I rise for, sir, and I think it refers also to his number too, is that I notice in the first proposal they have what—75 and 100 which provides for an uneven split at the bottom but it doesn't provide for an uneven split at the top. I submit that Mr. Foster's proposal also has this problem and if we leave it at 100, you still have this problem. I wonder why they haven't provided for an uneven split here.

**CHAIRMAN GRAYBILL:** Mr. Ask.

**DELEGATE ASK:** Mr. Chairman. I rise in support of Mr. Davis' motion to set a minimum of 100. He stated the reasons very well and I will be very brief. I think you've heard Mr. Kamhoot, Mr. Wilson, myself, Mr. Belcher mention that—I think the four of us represent 11 counties or parts of 11 counties—and if you go for the 75 to 100, if it was 75, out of the four, you're going to cut one out there would only be three. And this is a very large area and I think this is a very important facet of our Constitution to the rural areas. They're very concerned about this and I think this minimum of 100 establishes that it can't go below that and it could fluctuate above that; it'd be up to the Legislature and I think this figure of a minimum of 100 should be adopted by this body. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** I rise to support the motion of Carl Davis. As the state grows, I feel that we will result in a loss of representation if we do not set a minimum; but if we set a maximum amount, it will cause a loss in representation. I support Carl's motion.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. President, I rise in support of the amendment of Delegate Davis. It seems to me that it's very important that we do this thing, that the people from the city who are represented in this Convention should say to rural Montana that we are not going to oppress you; we want your representation in the Legislature. And with a minimum figure of 100, they will have that representation, they will support the Constitution. I think it would be the most statesmanlike, charitable and the right thing to do and I support it wholeheartedly.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. I, likewise, support the amendment of the gentleman from Beaverhead. I call attention to the fact that the 100 is the irreducible minimum that 20 years, 40 years, 30 years from now, it may be necessary for the Legislature or the apportionment commission—whoever is going to apportion it—to have more than 100 and I think that if you have a set figure of 75 to 100 or any other figures that are set with a maximum and a minimum, that we're going to get into a trap in the years to come.

**CHAIRMAN GRAYBILL:** Mr. Simon.

**DELEGATE SIMON:** Mr. Chairman. Coming from the largest city in the State of Montana, as you all know, I heartily support the fact that we should have in both unicameral and bicameral, no less than 100. I get around into the areas outside of Billings quite a little, especially in Carbon and Stillwater County—they still allow me to go up there. I believe that we would do a disservice to the State of Montana, and to the rural people, and certainly coming from a little town in Bridger, Montana before I moved to Billings, I have a great feeling for the rural people in the State of Montana. And I would like to go on record emphatically for 100 in each house. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman, would Mr. Davis yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Davis, will you yield?

**DELEGATE DAVIS:** Yes, I yield.

**DELEGATE LOENDORF:** Mr. Davis, in view of the fact that legislators as they reapportion tend to only increase in size, would you object to putting a maximum number of legislators into the Constitution?

**DELEGATE DAVIS:** I would stick with my proposal of a minimum to provide flexibility. That way, if they needed to increase or lose—or one or two—but, really, no, I don't think 100, if it once passes the test, would be satisfactory.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman. Perhaps I didn't phrase my question very well, Mr. Davis. Would you consent to perhaps a minimum of 100 and a maximum of 105 is what I really meant to ask, I guess.

**DELEGATE DAVIS:** Yes, I would consent to that.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** May I ask Mr. Davis another question? Would you so amend your motion, Mr. Davis?

**DELEGATE DAVIS:** Yes, I would so amend my motion to read, if the Chair will permit, "to not less than 100 members nor more than 105."

**CHAIRMAN GRAYBILL:** Unless the Chair hears objection to this, the Chair will allow Mr. Davis to amend his motion. Do either of the gentlemen standing wish to object?

Mr. Siderius.

**DELEGATE SIDERIUS:** I object to that—to amendment. I feel that there should be probably a minimum but no maximum.

**CHAIRMAN GRAYBILL:** All right, objection having been raised, Mr. Davis, do you want to withdraw your motion and make a new one?

**DELEGATE DAVIS:** I'll withdraw it and leave it as it originally was, Mr. President, if it's permissible, "that there shall be not less than 100."

**CHAIRMAN GRAYBILL:** All right, we'll leave it at "not less than 100."

Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I'm pleased to see that this body feels that we need adequate representation. I, too, feel this way. And if we must live with a unicameral Legislature in the future, I support a large number of legislators. However, when we started this, when we first came to Helena—we heard the figures of 40 to 60 in a unicameral body would be adequate. We hear how efficient Nebraska works with its 49. It's very interesting to see the changes of minds.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman. Would Mr. Davis yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Davis, do you yield?

**DELEGATE DAVIS:** Yes, sir, I yield.

**DELEGATE SCANLIN:** Mr. Davis, if the original point of the original proposal as made by Mr. Harper removed the 100 at the top, would that make any difference in your motion? That is, to have the minimum 75 and no top limit.

**DELEGATE DAVIS:** In answer to your question, Mr. Scanlin, no it would not. I feel the minimum should be 100. It has been approved by the court at this time and I think it's a minimum that would give the type of representation we all want the area to have—the rural and cities to work together in harmony. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Vermillion.

**DELEGATE VERMILLION:** I rise in support of Mr. Davis' amendment and I want to point out that we're talking about rural people; but I think we should aim that into all minorities, not just rural people, but perhaps low income and other groups. For instance, if you had a district of 7,000 people and let's say there were 3500 of that were a member of a minority group—low income if you will—and that district, though its people have a 50 percent representation in their vote, has a weight and it has an effect. Once you start reducing the number in the Legislature and get the size of the districts larger, say you would lower the number and you had a district with representing people numbering 10,000, then those 3500 people would only be 35 percent of that district; their vote would be proportionally less; they would have less effect—they would have less political effect and would have less effect in the Legislature. So, I certainly support Mr. Davis' amendment.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee

**DELEGATE BUGBEE:** I would like to say that I think it is an enormous mistake not to have an upper limit as well as a lower limit. I'd just like to ask the people in this room to look at the size of the room; this is probably the only room that's going to be here for the next 40 to 50 years, and where would everyone go if you have a sliding and escalating number of people?

**CHAIRMAN GRAYBILL:** Mr. Leuthold.

**DELEGATE LEUTHOLD:** Mr. President, fellow delegates. I agree with Mrs. Bugbee that we're sort of getting stampeded here, and I hesitate to oppose Delegate Davis' proposal because I, too, come from a rural area. But I think we should consider the room that we have and anytime you get over 100, why, it does get crowded in here. I believe the original proposal of 75 to 100 gives a lot of room for flexibility in reapportioning. I think it's a much better figure especially when we—since we've approved of single member districts. I think most of these rural areas are going to be much better represented with the single member districts than what they have been in the multi-member districts, and we should keep that in mind. Any time that you raise the number of legislators, you also raise the cost. I think it'd be better to have a little smaller—and I don't believe in a small Legislature—but I think it's better to have a little smaller Legislature and save some of your money for research groups. And I personally would favor the original proposal in the section as it was proposed by Representative Harper—or Delegate Harper.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman. I rise in support of Delegate Davis' proposal. We seem to have, as I've heard mentioned here on other days, two kinds or three kinds of legislators. We want to give them flexibility, we want to give them power and then we talk about their lack of judgment. I'm sure that they're just as capable of appraising the size of this room as we are who are here today, and I'm quite sure that if we give the Legislature this authority, we set the minimum so that the rural areas have their representation and feel good about this matter, that we can trust the Legislature not to put another 100 people—or try to put another 100 people—into this room. If need arises to increase it 4 or 5, there's no great harm done and I just don't believe that Legislature is going to be so stupid, if I may use that word, as to try to crowd another 50 people or what have you into this room. And I think we should support Delegate Davis' amendment. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman. I'm Jerry Cate from the Little Beaver Creek, a rural area south of Baker. I'm currently residing in the biggest and the best city, Yellowstone—Billings, Montana. I'm in favor of the amendment of Mr. Davis because I do believe that as Montana grows, our rural interests which are so important to our economy, have to have some type of protection. The—I would like to point out that we do have now, and hopefully will retain in this article, a reapportionment commission, and I feel that that commission can act in a responsible manner and limit the size appropriately of any unicameral system. And secondly, I think it's a mistake for the unicameralists to insist on a small unicameral system because I think if there's one thing that would defeat unicameralism, which I tend to think is a very good system, it would be to limit the size to something like 75. The rural people aren't going to buy that, but I think the rural people will buy a Legislature of 100. And I would further point out that a unicameral system, if it's adopted, will be cutting the representation from what it presently is of 150 down to 100, so part of the economies that the unicameralists are attempting to achieve by limiting the size would be accomplished. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman. I would like to speak in opposition to the amendment as presently proposed. I suggest that this is a trap. Don't forget that the voters have to vote on this proposal and with no limit on the size of the body, there will be those who will say to the electorate, "This is a proposal to provide a Legislature of 200", and there's no way to adequately counteract that argument. I certainly would agree with the amendment—one point of Mr. Davis—in which he put a limit of 105, but I submit that to present a question to the voters in which they, in effect, are voting to give the Legislature unlimited powers to increase their size, is very ill-advised. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Skari.

**DELEGATE SKARI:** Mr. Chairman. I support the majority proposal, the size of 75 to 100. I, like Mr. Leuthold, also come from a rural area. I think size is a constitutional question. I think with annual sessions, possibly annual salaries, I think we should consider the budget here a little bit too. I think that we should not allow a Legislature to increase beyond a certain size. It has been pointed out that Nebraska has 49 legislators for one and a half million people. I am sure that our Legislature will remain in the vicinity of the 100 legislators at the top of the limit. We will have twice as many legislators per 700,000 people. I think that is adequate to represent the rural areas.

**DELEGATE AASHEIM:** —Chairman.

**CHAIRMAN GRAYBILL:** Mr Aasheim.

**DELEGATE AASHEIM:** I, too, come from a rural area. I know some of you haven't been to God's country, but that's something you can look forward to. But, we are rural; the county has about 6,000 people and we feel 100 representatives would satisfy Montana. We would be satisfied with that proportion. Someone has said, "Well if the population increases, we should be able to take this lid off." Well, California has several times as many people as we have and they have a 40-80 proportion, so I don't think we need to worry about that. But I would resist this motion to have a minimum of 100 because the reapportioned commission should have some leeway. And we had the 75 as a bottom, but you can be very sure the Legislature isn't going to use that bottom figure unless it has a good reason to. They're going to make recommendations to the committee—the commission, the reapportionment commission—as close to 100 as they possibly can. I recognize that you people are trying to get representation, but I feel that Montana is pretty well represented here today and I would resist the motion by—the last motion.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, is an amendment in order?

**CHAIRMAN GRAYBILL:** An amendment is in order to the substitute amendment.

**DELEGATE HELIKER:** Mr. Chairman, I move to amend the substitute motion to place a maximum of 120.

**CHAIRMAN GRAYBILL:** Mr. Heliker's amendment would make Mr. Davis' motion read, "not less than 100 nor more than 120 members." We'll now debate Mr. Heliker's amendment.
Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I feel that it's necessary to resist the amendment of Delegate Heliker from Missoula. One of the reasons that I do this is because if we have a small number of representatives in the House, whether it be unicameral or bicameral, Ravalli County is going to have to have one of its single member districts merge at least in part with Missoula, and I don't want to see that happen. I want to try to preserve, as long as I possibly can, our own areas as areas for two representatives. Secondly, I feel that we'll never need 120 in the foreseeable future; this house has had as many as 110 in it and was able to accommodate that number. In the two sessions that I served, we had 104 and nobody was trampled as far as I could see, and representation was good. I feel that perhaps in years to come that it may be that we'll have to have more than 100, but if you have an open—no ceiling on it, why the Legislature or the commission, which may be doing the job of apportioning, will be able to go up to 102, 104, or even 105, or even 110. But you'll have a ceiling—no ceiling which will inhibit raising it some.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, nevertheless, I think that Mr. Foster has put his finger upon a very real problem, that when we take this to the people we'd better have a maximum on it. Now, I don't care whether it's 105 or 110 to 120. I think 120 will give reasonable leeway, and I suppose the commission will keep it under control. And perhaps it won't go anywhere near the maximum but there should be, it seems to me, a maximum.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Heliker's amendment to Mr. Davis' substitute amendment, namely that there be not more than 120 members. So many as are in favor of Mr. Heliker's amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and the motion fails. We're now debating Mr. Davis' motion.
Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, I move to amend Mr. Davis' motion to read, "not less than 100 nor more than 105."

**CHAIRMAN GRAYBILL:** Very well. Mr. Foster has moved to amend Mr. Davis' amendment so that it reads, "not less than 100 nor more than 105 members."
Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I rise in support of the substitute motion presented by Delegate Foster and I want to alert all those who support the unicameral system to seriously consider the amendment that places a maximum upon the number that may be determined as necessary for that type of unicameral Legislature. If we do not have a maximum limit upon it, then the arguments that have been used throughout the campaign—that will be used throughout the campaign, to convince people that the unicameral system should be adopted for Montana, may be turned against us. Then there will be no limit; we may end up with the same size of legislative body that we have now. We do not expect that to happen, but those arguments can be used against us. I submit that Delegate Davis is right. We should have a body of 100 to insure rural representation. But on the other hand, we should guard against anyone using the thought behind it as an argument against the unicameral system. I support the amendment of Delegate Foster.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President, I would concur in that amendment and support it as well.

**CHAIRMAN GRAYBILL:** Mr. Davis is going to support the amendment also. We still have to vote on it because there was objection to incorporating it in yours. Very well. The issue is now on Mr. Foster's substitute that there be not more than 105 members, that that limit be placed on it.

Mr. Foster.

**DELEGATE FOSTER:** Can we have a roll call, Mr. Chairman?

**CHAIRMAN GRAYBILL:** Very well. We'll have a roll call vote. So many as are in favor of Mr. Foster's amendment which places a limit of 105 on Mr. Davis' substitute motion of 100, vote Aye and so many as are opposed, vote No. Have all the delegates voted? Does any delegate wish to change his vote? Very well. Will the clerk record the vote?

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Absent |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Absent |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Graybill - Chairman | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Absent |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Absent |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Absent |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Absent |
| Monroe | Nay |
| Murray | Absent |
| Noble | Aye |
| Nutting | Aye |

| | |
|---|---|
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Absent |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Nay |
| Simon | Aye |
| Skari | Nay |
| Sparks | Aye |
| Speer | Absent |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Absent |
| Warden | Aye |
| Wilson | Absent |
| Woodmansey | Aye |

**CHAIRMAN GRAYBILL:** Please announce the vote.

**CLERK SMITH:** Mr. President, 71 voting Aye; 15 voting Nay.

**CHAIRMAN GRAYBILL:** 71 having voted Aye, 15 having voted Nay, Mr. Foster's motion is carried. We're now on Mr. Davis' substitute motion that subsection 2—or Section 2 rather—of Article V of the unicameral Legislative proposal reads, "The number of senators shall be prescribed by law but there shall be not less than 100 nor more than 105 members". So many as shall be in favor of Mr. Davis' substitute, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it.

Mr. Scanlin.

**DELEGATE SCANLIN:** I call for a roll call vote on that please.

**CHAIRMAN GRAYBILL:** Well, we're going back and we now have adopted it, but we're going back and adopt Section 2, as amended. Mr. Harper, members of the committee, you now have before you the motion of Mr. Harper that when this committee does arise and report after having under consideration Section 2, as amended by Mr. Davis, that when the committee shall arise and report after having under consideration Section 2, as amended, it recommend the same be adopted. We'll have a roll call vote on that. All in favor vote Aye, opposed, No. (Inaudible)

**DELEGATE AASHEIM:** May I explain my vote?

**CHAIRMAN GRAYBILL:** The voting is open. You may explain your vote.

**DELEGATE AASHEIM:** I object to the minimum of 100 because it might put the reapportionment committee in a bind, and I don't know why we have to have a minimum of 100 because no Legislature will use that minimum anyway.

**CHAIRMAN GRAYBILL:** Does any other delegate wish to explain their vote?

Mr. Scanlin.

**DELEGATE SCANLIN:** I wish to take the same stand as Delegate Aasheim.

**CHAIRMAN GRAYBILL:** Very well. You may still vote. Can't you vote? It's still open. Now, have all the delegates voted?

Mrs. Bates.

**DELEGATE BATES:** What are we voting on? I'm just entered again.

**CHAIRMAN GRAYBILL:** We're voting on Section 2 as amended, 100 to 105, and we're voting that when this committee arises and reports that that be what we arise and report. Now you—are there any other delegates want to change their vote? Very well. The vote is closed. Will you please tally the vote?

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Absent |

| | |
|---|---|
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Absent |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Absent |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Graybill-Chairman | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Absent |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Absent |
| Kamhoot | Absent |
| Kelleher | Absent |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Absent |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Absent |
| Monroe | Nay |
| Murray | Absent |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Absent |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Nay |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Absent |
| Woodmansey | Aye |

**CLERK SMITH:** Mr. President, 71 voting Aye, 17 voting Nay.

**CHAIRMAN GRAYBILL:** 71 having voted Aye, and 17 having voted Nay, Section 2 as amended has been carried. Will the clerk read Section 3?

**CLERK SMITH:** "Section 3. Election and Terms of Members. A senator shall be elected for a term of 4 years; one-half of the senators shall be elected every 2 years. A senator's term shall begin on a date provided by law." Mr. President, Section 3.

**CHAIRMAN GRAYBILL:** Who's in charge of Section 3?

Mr. Cate.

**DELEGATE CATE:** Mr. Kelleher's in charge of it, but I would move that when this committee does arise and report that it adopt Section 3 of the majority report as its recommendation for unicameralism proposal.

**CHAIRMAN GRAYBILL:** I trust you all got that. All right, Mr. Cate has moved for Mr. Kelleher that Section 3 be adopted when this committee arises and reports. Is there discussion on Section 3? Now, we have an amendment proposed by Mr. Champoux. Mr. Champoux, may we read the amendment?

**DELEGATE CHAMPOUX:** Yes, sir.

**CHAIRMAN GRAYBILL:** —clerk read the amendment? Do you have it?

**CLERK SMITH:** Yes, I have it here. "Elections and Terms of Members."

**CHAIRMAN GRAYBILL:** Well, let me read it. "Election and Terms of Members. Senators shall be elected for a term of 4 years. These elections must be of a partisan nature." Mr. Champoux suggests that that language be placed in Section 3 instead of the language there. "Senators shall be elected for a term of 4 years" is the same. He then strikes out the rest, "one-half of the senators be elected every 2 years and to begin as provided by law", all that's out and in place of that he puts, "This election must be of a partisan nature".

Mr. Champoux.

**DELEGATE CHAMPOUX:** Maybe I wasn't clear on that. I don't want to strike the rest of it. I simply want to add the sentence, "These elections must be of a partisan nature" after "The senators shall be elected for a term of 4 years." I didn't mean to strike the rest of it.

**CHAIRMAN GRAYBILL:** All right, I'll repeat the amendment. The amendment is to add in line 16 on page 3 after the words, "4 years", a sentence so that the section will read, "A senator shall be elected for a term of 4 years. These elections must be of a partisan nature." Then he leaves in the rest of the section. So, he merely adds the phrase, "These elections must be of a partisan nature."

**DELEGATE CHAMPOUX:** May I speak to that sir?

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I know many of you perhaps would think, and probably do think, that this is of a statutory nature. However, I bring it up at this point simply to get it on the floor to discuss it. I feel that in the future there could be an attempt to get nonpartisan elections—a very good possibility. We have them in a number of other states, a lot of counties and so forth, have them. I believe that our political parties stand for certain principles and these could be hidden in a nonpartisan election; not so in a partisan election, however. I also feel that those with the most projection in a district, and I don't mean to insult anybody here when I say this, that is, automobile dealers, store owners, and so forth, would have a better chance for election, generally speaking. Or at least, their chances would be enhanced because of the projection, and generally speaking, I feel that this group has been and probably remain so, one party. If you get a nonpartisan election system in the State of Montana, I also submit that this may, very likely, kill the party structure at the county level. This means the party with the most money has a better chance statewide. I would like to hear it discussed. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Jacobsen.

**DELEGATE JACOBSEN:** Mr. President, I wholeheartedly agree with Mr. Champoux. I believe we need the partisan politics. We do not want to weaken the party structure. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Will Mr. Champoux yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** (Inaudible) yield.

**DELEGATE BERG:** Would your amendment preclude an Independent from filing for, and being elected to, the Legislative Assembly?

**DELEGATE CHAMPOUX:** No, sir, it wouldn't. For the record, I would include any party, whatever it be named.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Yes, will Mr. Champoux yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Yes, I will yield.

**DELEGATE ROBINSON:** If it's an election of a partisan nature and Independents are not a party, but they are merely Independents, would they be precluded from running?

**DELEGATE CHAMPOUX:** No, I wouldn't, if we want to add something to it—if you want to call it partisan or Independents, I'd go for that.

**DELEGATE ROBINSON:** Well, as you had it stated, if you say of a partisan nature, I think that it would be interpreted in the court that unless they are, indeed, members of parties, they could not run.

**DELEGATE CHAMPOUX:** Well, if you want to rewrite the sentence to include the Independents, I would accept it. Do you have an amendment in mind?

**DELEGATE ROBINSON:** No. Mr. President.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Will Mr. Champoux yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I yield.

**DELEGATE ROBINSON:** Do you feel that the party system in Montana is working well—is a very strong two-party system?

**DELEGATE CHAMPOUX:** That's a loaded question.

**DELEGATE ROBINSON:** Well, will you answer it? (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I believe, historically, the two-party system has worked. Whether it's working at present, it depends upon what you mean by that specifically. It may be in a period where it's not working as well as it has in the past, but I have faith in the two-party system or in a multiparty system for that matter.

**DELEGATE ROBINSON:** Yes, I do too. My question is, in the present Constitution, parties are not mentioned at all. The two-party system has worked very well, it seems to me, very strong in Montana, and it was not mentioned in the Constitution of 1889; and if we do not mention it in the Constitution of 1972, I don't think that the party system is going to suffer by its exclusion.

**CHAIRMAN GRAYBILL:** Mr. Champoux, I don't think that was a question. (Laughter) Is there further discussion of Mr. Champoux's amendment?

Mr. Anderson.

**DELEGATE O. ANDERSON:** I'm sorry taking time here but I ran as an Independent because I did not want to be shackled by any party restrictions; and if I should want to run as a candidate again as an Independent, and commit myself for parts of either party's program or planks, I think that the opportunity should exist. We've been talking about the denial of many, many rights here in the giving of rights. And I think this is a fundamental right that would be denied by the adoption of this, and I urge its defeat.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. President, may I add the words then, "or independent nature"?

**UNIDENTIFIED DELEGATE:** No, that wouldn't work.

**CHAIRMAN GRAYBILL:** Mr. Habedank, could you explain the difference between a partisan and nonpartisan to these people?

**DELEGATE HABEDANK:** No, Mr. President, I'm not sure I could; but I feel, as Mrs. Robinson has pointed out, that this is completely unessential. The Constitution has given us the right to have parties and I'm very much in favor of parties; when you start trying to clarify it, you get back into the stage where nobody knows what we mean. And I recommend sticking with the majority proposal.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, in view of the fact that in discussing this in the committee, we felt that if there was a unicameral body, that it should be a partisan basis. And I was wondering, could we move that this be in the explanation, that this is the intent? I would like to so move.

**CHAIRMAN GRAYBILL:** Well, I don't think your amendment is timely, Mrs. Bates. It might be timely if we get this to Style and Drafting and you wanted to say that in the final thing, but we're not to that stage yet. However, the debate's recorded and we've had—what we've said here will be in the transcript.
Mr. James.

**DELEGATE JAMES:** Mr. Chairman. I would like to speak against the amendment. As a member of the Bill of Rights Committee, I think we should regard the rights of the candidate to run any way he wishes, and the rights of the voter to choose anyone he wishes. Thank you.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Champoux's amendment.
Mr. Choate.

**DELEGATE CHOATE:** Well, if an amendment to his amendment is in order, I would like to suggest or amend the amendment to say "may", instead of "shall", which would permit partisan election or Independent.

**CHAIRMAN GRAYBILL:** All right. Mr. Choate has amended the amendment of Mr. Champoux to say "may", instead of "must"; these elections may be of a partisan nature. So many as shall be in favor of Mr. Choate's amendment say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as shall be opposed, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and it failed. We're back on Mr. Champoux's amendment. His amendment is, these elections must be of a partisan nature. So many as shall be in favor of Mr. Champoux's amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as are opposed, please say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The motion—the amendment failed. We're back on Mr. Cate's proposal that Section 3 of Article V unicameral Legislative proposal be adopted. Is there further discussion?
Mr. Romney.

**DELEGATE ROMNEY:** I wish to make an amendment but I do not have it written out. I was called to a phone, I couldn't get to it. Can I have a page get me a sheet or shall I state it?

**CHAIRMAN GRAYBILL:** Is it long or is it short?

**DELEGATE ROMNEY:** No, it's very short.

**CHAIRMAN GRAYBILL:** All right, let's try it.

**DELEGATE ROMNEY:** In two places, I want to offer a substitute in lieu of "4 years", "2 years" and delete the "one-half of the senators shall be elected every 2 years." So, that the section would read: "Section 3. Elections and Terms of Members. A senator shall be elected for a term of 2 years. A senator's term shall begin on a date provided by law."

**CHAIRMAN GRAYBILL:** Very well. Mr. Romney's proposed amendment to Section 3 would change the term of the senators from "4" to "2" years. Therefore, he would not need the middle sentence which says that half of them have to be elected every 2 years.

**DELEGATE ROMNEY:** Mr. Chairman, I'll be very brief. I think it makes a representative more responsive to his electors and I think that holding over half of the body for 2 years is an anachronism. That's all I have to say.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, I rise in objection to resist Mr. Romney's amendment on the basis of it would destroy continuity in the legislative process.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Romney's amendment that Section 3 be amended, so that the term of the senator would be 2 years in the center section asking for half of them be elected each year be dropped. Mr. Romney, do you want a roll call vote?

**DELEGATE ROMNEY:** Right. I asked for seconds. (Seconds rise)

**CHAIRMAN GRAYBILL:** All those in favor, please vote Aye on the voting machines, and those opposed, vote No. Have all the delegates voted? Does any other delegate wish to change his vote? Please record the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Absent |
| Barnard | Absent |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Aye |
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Aye |
| Foster | Nay |
| Furlong | Aye |
| Garlington | Nay |
| Graybill-Chairman | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Absent |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Absent |
| Murray | Absent |
| Noble | Aye |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Absent |
| Robinson | Absent |
| Roeder | Absent |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Aye |

Warden .............................. Nay
Wilson .............................. Absent
Woodmansey .......................... Nay

**CLERK SMITH:** Mr. President, 23 voting Aye, 68 voting No.

**CHAIRMAN GRAYBILL:** 68 having voted No and 23 Aye, the amendment fails. Members of the committee, you now have before you on the motion of Mr. Cate, that when this committee does arise and report after having under consideration Section 3 of Article V of the unicameral Legislative proposal, the same shall be adopted. So many as shall be in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Will the clerk read on page 32, Section 1 of the Legislative article for the bicameral system?

**CLERK HANSON:** "Section 1, page 32: Powers and Structure. The legislative power of the state is vested in legislative assembly consisting of a senate and a house of representatives. The people reserve to themselves the power of initiative and referendum." Mr. Chairman, Section 1.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. President. I move that when this committee does arise and report after having had under consideration Section 1 of the bicameral proposal, it recommend the same be adopted. Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Aasheim. Mr. Aasheim, please discuss the Legislative bicameral article.

**DELEGATE AASHEIM:** I shall do that, Mr. President, with enthusiasm. Members of the assembly, we have today three proposals for a Montana government and I assure you, they have all been good proposals. They are good proposals. The parliamentary system has been proven. I can't say that the unicameral has been proven, but it works in Nebraska apparently. The bicameral system has been in operation for many years. It has many faults and it is probably tragic that we are meeting at this time because of the stigma attached to the last Legislative Session; and I think it's probably well that we should analyze that Legislative Session before we become unduly critical of the bicameral system. Because that Legislative Session was faced with apportioning itself which is, in itself, a mammoth task. They were forced with a sales tax which proved to be an imponderable task. Consequently, they were accused of bickering; they were accused of being irresponsible and I think now you people, who have come here as delegates to make improvements, have come to realize more and more that maybe there was justification for some of that irresponsibility which you accused that Legislative Assembly of. I have yet—I'm not going to criticize the unicameral because, really, we don't have anything to criticize because we don't know how it would operate. I think it would operate in Montana. We can live with that kind of a system but I'm reminded of the time Khrushchev was here in America. He traveled throughout America and had seen our economy and our political system and one of the Americans asked him, "You have seen how well ours works; would you adopt our system," and Khrushchev turned to him and he said, "If the reverse were true, would you adopt ours?" And with that in mind, it's pretty difficult to change a system. It's a matter of making it work. And in our deliberations so far, I think we have made great strides in making our system, the bicameral system, work better. Now, we have given them more time and this has been the big criticism in the past. They have been rushed, there's no question about it. We have been rushed in our deliberations; we would liked to have had more time but they have not had the time. In fact, they have had less time for what they have had to do. Now, there were some matters said about the unicameral system, which I would like to not criticize too much, but they were made with the idea that the bicameral was not accountable. I think if we were to look back over the years, the bicameral has been quite accountable. They have accomplished much. They have been criticized much. But the bicameral system is a democratic system. The people don't want quick action; they want deliberate action. They want legislation considered carefully. Yes, individuals, groups, want action, but the masses are very conservative and I have said at one time that because of that fact, the unicameral people will not last long. And I am certain that the first two sessions of the unicameral, you will find a big change in the membership because the people don't want that quick a change. And what's going to happen?

You're going to get a group who are afraid to move for change. They're going to be afraid to be innovative, and that is an important facet of the bicameral system. This chamber, the house chamber, can dare to be innovative, because they know that the next chamber will take a second, long look at it. And this is probably the greatest criticism that I might present to you about the unicameral system. The members are going to be cognizant of this conservative feeling of the people and the unicameral, instead of being progressive and innovative, is going to be conservative. They don't dare to be innovative. In fact, it's not going to do what the unicameral people think it's going to do. It was said that Norris barnstormed through Nebraska in 19—somewhere in '30, '35, '37 it was adopted—and he sold it because it was economical and it is economical; there's no doubt about it. It'll be—cost less to operate the unicameral system but I ask you, can we be penny-wise and pound-foolish? The other day we were talking about the amount of money that's lying around for the State of Montana to be investing—some $350,000,000. That's a lot of money, and if the bicameral structure might help protect because it has time to think, because it has time to watch these matters, whereas the unicameral probably would not. I maintain it's better to have two eyes than one in any matter and I think we've found that in our deliberations. Now I don't know about this statement that a unicameral makes better representation for the rural people. I don't believe it really does; I can't see where it does because, in our proposal, we have more people in the bicameral system, so I would challenge that statement. As a matter of the lobbyists, I really can't answer that. Will the lobby have more influence in a unicameral or a bicameral? I really don't know. I really don't know. Like we've said before, if you want to pass something, you want a unicameral. If you want to keep something on the books, you want a bicameral, but I don't think that that's a very good argument. But I want to make just one more comment and this probably you people have seen here in this—in operating here, that you have friends already, and when you can see how you vote or how your friends vote and your friend has a proposition, you sometimes hesitate to vote because of that friend's position. Now, this isn't so apparent right now but suppose you had spent say a year or 2 years, 4 years, 6 years—I don't care whether you're Republican or Democratic—eventually, you'd develop a fraternity. This is what I am afraid of—really afraid of. I've seen it operate and if you have a second house, you have a safety valve. Now, the unicamerals say this is what we're talking about; you've got to be accountable. I agree but, just the same, you also have to be a human being. You've got to be a human being no matter where you are and there are times you're going to weaken even if you're representing the people back home. Now, I'm not going to spend any more time. Someone else probably has a few more words to add.

**CHAIRMAN GRAYBILL:** It is the Chair's intention to recess at 5 o'clock unless someone wants to add something to this. But we are going to come back tonight, so we can discuss the Legislative article further tonight. I think I'll call on Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. The reason that we're coming back tonight is that it would be impossible to get done here in any reasonable length of time. We have four new sections. We have under reconsideration Section 4 and Section 16 and possibly others, and we're not through with Mag's motion now, so it would be late in the evening before we'd ever have a chance to get through. For that reason, I move that the Committee of the Whole stand in recess until 8:00 p.m. this evening.

**CHAIRMAN GRAYBILL:** Motion is to recess until 8:00 p.m. All in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it and so ordered.

(Convention recessed at 5:00 p.m.—reconvened at 8:05 p.m.)

**CHAIRMAN GRAYBILL:** The Convention will be in session. The committee will be in session. Mr. Aasheim, we're on Section 1 of Article V of the bicameral Legislative proposal and you had just had the floor, and if you want the floor to summarize what you said before, you may have it, or we can go ahead and debate. Section 1 of Article V on page 32.

**DELEGATE AASHEIM:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I think I took all the time I had coming and I'll let someone else talk if they want the floor.

**CHAIRMAN GRAYBILL:** Very well, the question is on Section 1 of Article V on page 32, the bicameral proposal. Is there discussion?

Mrs. Robinson.

**DELEGATE ROBINSON:** Yes. Will the other part of my conference committee of yesterday yield to some questions? (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Aasheim, will you yield?

**DELEGATE AASHEIM:** I yield.

**DELEGATE ROBINSON:** Going back to some of your remarks that you made earlier concerning the bicameral Legislature and the unicameral. You made the comment that a unicameral body would tend to be more conservative, would tend not to be innovative. I wonder if you have any information or statistics to back that up, or is that just a personal feeling that you might have?

**DELEGATE AASHEIM:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** This is my personal feeling and I'm concerned about it because I think it is a possibility, I really do, that the first approach to this will be to have a liberal group and the people, I feel, don't want—I mean, that this is democracy. Democracy is a slow moving process. People may demand something on the spur of the moment but really they're conservative and I think that the body will tend to become conservative by public demand.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** I don't understand. You were talking against unicameral today, saying that it would tend to become conservative, and now you're saying that a unicameral will become conservative because that's what the people want. I don't understand your reasoning.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I feel that the purpose of unicameralism is to express the immediate feeling of the people, and I think that's what you're trying to embody here in unicameralism because you have—I am under the impression that the two bodies are too conservative and have been holding back good legislation, which they have. I can recall back in 1958 and 1959 we were trying to get vo-tech instituted into Montana, and we tried and we tried and we tried, and finally now we have a pretty fair vo-tech program. I can mention many things which finally became adopted but it took a long time, whereas, I think if probably unicameral to start out and they would flare right in and people aren't ready for it.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Yes, Mr. Chairman. I would like to just comment briefly on his remarks. I think he has proven a very good point in favor of unicameral, indeed. We are not interested in a system that does stop the will of the people. I have done some research on Nebraska's unicameral and it has not become conservative. I would dare say that they have done a few things that this unicameral body ought to do. One is they have adopted an ombudsman, or people's advocate. They also have consumer protection, something that failed to pass in this last session of the Legislature. If you will look back at what happened on consumer protection, a very good consumer protection bill was introduced in the House. It passed 73 to 25. A similar consumer protection proposal was introduced in the Senate. Passed 52 to 3. What happened to these bills when they got to the other committee in the other house? They died. They were never even reported out of committee. Here were two houses that were both very much in favor of consumer protection, but the people of Montana did not get any consumer protection. I would simply submit that the notion that unicameral bodies tend to become too conservative simply is not proven.

**CHAIRMAN GRAYBILL:** Now, the Chair would like to remind the delegates that we're debating Section 1 of Article V of the bicameral Legislative proposal in an effort to make it the best bicameral Section 1 we can get.

Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. President, you've said very clearly what my point was going to be. I think we've been exposed this afternoon, and the appearance is we might be exposed this evening to an educational process that we may not need. I have a feeling that consultations one by one would be far more interesting and educational than perhaps the kind of speeches that we may be tempted to give here on the floor. I think that your point is one that I wanted to simply ask a question about. Are we not designing the best possible bicameral system, rather than debating its merits in general?

**CHAIRMAN GRAYBILL:** Is there other discussion of Section 1?
Mr. Kelleher.

**DELEGATE KELLEHER:** I have this question, Mr. Chairman. It was obvious to me in the Legislative Committee upstairs that we agreed to pass the decision on bicameralism versus unicameralism to the people. If we're agreed on that, then what are we debating? What is the issue?

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman, as far as I know we're not agreed on that. Maybe that question should be brought up to the body tonight. I think there isn't an agreement as to this question.

**CHAIRMAN GRAYBILL:** Well, this matter has been brought up to the Chair and we might as well have it out. Now, we did vote the first day to submit a dual proposal, including both bicameral and unicameral to the Style and Drafting Committee so the Chair takes the position that we must go through the bicameral and through the unicameral both, and submit the best possible draft of each to the Style and Drafting Committee. This body voted to do that. Secondly, this body voted to do that after the Legislative Committee chose to conduct its entire committee operations on that basis. It was not an adversary operation in the committee. Now, I think it's a little late to change that, except if you want to vote on it, you'll have a chance to vote on it when Style and Drafting suggests a ballot, if it does. Is there further discussion on Section 1 of Article V?
Mr. Aasheim.

**DELEGATE AASHEIM:** For a point of clarification, I didn't tell the group about this but we had the television cameras on this afternoon, and part of the plan was to present a few arguments for both sides for the viewing public because the viewing public would like to know—the listening public would like to know the pros and cons, and that's why I arose to answer the arguments for the unicameral when the unicameral proposal was presented. And it was just for a matter of information because, oh, I have been asked time and time again, "When are the bicameralists going to speak up for their side?" And I still stand by my original motion that this be put on the ballot. However, I understand from the Style and Drafting and the powers that be that we will have an opportunity to decide this when it comes from Style and Drafting. And I think, Mr. Chairman, the group would like to know—will we then, when it comes back from Style and Drafting, will we have a chance to reconsider our motion?

**CHAIRMAN GRAYBILL:** Well, first—let me answer your first question first. I certainly agree with you, Mr. Aasheim. I think it's unfortunate that the television cameras did not get both parts. I was not aware of the fact that that was the purpose for which you arose this afternoon or we might have made amends and let you get on television to explain that. I have tried not to vary the program here based on what the television people cared to film. I've tried to go right ahead without worrying about what they film, but I think your point is well taken. Now, as—I'll tell you how the Chair sees it, which may certainly not be the final result, but you conducted your committee not as an adversary thing, but as an attempt to find a good bicameral and good unicameral proposal. The first thing we did when the Legislative proposal was up was to adopt a motion, which we adopted, I think, unanimously or nearly unanimously that we would send this to Style and Drafting as a dual proposal. Style and Drafting preferred that language and so, I believe, did the committee; so that Style and Drafting's hands were not tied. But Style and Drafting must deal with two separate proposals if we send them there and the first thing they will do is come in with a report which will clean up the language, similar to the one that's going to be laid on your desks for General Government tonight. But then another thing that Style and Drafting must do the next time we send these dual proposals back to them is propose a ballot. Now, at that time, Style and Drafting has to decide either to put this matter on as an alternative matter, A and B, or to put one of them in the Constitution and the other one off to the side, or devise another of several possible ways of putting this on the ballot. At that point, when they come in with that ballot proposal, this will be debated before this group, and if anyone doesn't like the proposal, he can propose to do it differently. And if he wins, then unicameral or bicameral or parliamentary—

well. I guess parliamentary is out now—but anyway those two could vie for the top spot or for the only spot on the ballot. So, at that time, we can debate if necessary this issue. The Chair is going to resist if it can any attempt to determine this issue tonight. I think it would be catastrophic in more than one way, because if one side or the other got a very great upper hand, I think it might mean that the other side would be out, and I'm not sure how the votes are right now. So, I'd just as soon go ahead and let Style and Drafting come in with their ballot proposal after we've given them good language on both sides. Now, with that explanation, does anyone want to do anything other than debate Section 1?

**DELEGATE AASHEIM:** Mr. Chairman, I do.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I will close on Section 1 if no one else wants to say anything.

**CHAIRMAN GRAYBILL:** Mr. Brazier, have you got a—for what purpose do you arise?

**DELEGATE BRAZIER:** I rise to call to the attention of the Chair the fact that if this Convention did agree to send both the bicameral and the unicameral proposals to Style and Drafting, then we'd better correct our minutes of February 19th, 1972, because they do not show any vote taken by this Convention, only a report by the committee on legislation.

**CHAIRMAN GRAYBILL:** Very well, we should correct them then because there was a vote taken. Well, I'll discuss that with the journal, but I distinctly remember it was an oral vote, it was not a roll call vote, and it was taken by the Ayes and the Noes, and the Ayes had it and I didn't hear any Noes. So if the journal isn't right, we should correct it, and I'm glad you brought that to our attention, Mr. Braizer. Let's talk about it later, Rosemary. Now, members of the committee, you have before you, on the motion of Mr. Aasheim, the Chairman of the Committee on Legislative, that when this committee does arise and report after having under consideration Section 1 of Article V of the bicameral majority proposal that it recommend that the same be adopted. So many as be in favor of that motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.

**DELEGATES:** (No audible response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Will the clerk please read Section 2

**CLERK HANSON:** "Section 2. Size: The size of the legislature shall be prescribed by law, but the Senate shall consist of not more than 40 nor less than 30 members and the House of not more than 80 nor less than 60 members."

**CHAIRMAN GRAYBILL:** Mr. Harper

**DELEGATE HARPER:** Mr. Chairman, when this committee does arise and report, after having under consideration Section 2 of the majority bicameral report, I recommend that the same do pass. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** I won't make a long speech on that. I think everything that was said about size in terms of the unicameral issue can be said here once again. I simply call your attention once again to the fact that of the other bicameral Legislatures in the western states, if you averaged them all out, you have a House of 60 members and a Senate of 30½. They vary in population from as small as ours, or almost so, or in case of Wyoming to even smaller, I guess, to California. They vary in size from smaller than Montana to Alaska, and that might be something of a guide for us as we are thinking in terms of the size of a Legislature that is both efficient as possible and representative as possible. And then the second thing, to remind you once again, that any time we reduce the size of the Legislature we reduce the size of the budget, and any time we increase the size of the Legislature, we increase the size of the budget.

**CHAIRMAN GRAYBILL:** Mr. Davis

**DELEGATE DAVIS:** (Inaudible)...the Clerk has my amendment.

**CLERK HANSON:** "Mr. Chairman, I move to amend Section 2 of the bicameral committee proposal, page 32 in line 13 by striking the figure '40', and inserting in lieu thereof the figure '50'; and to further amend in line 13 by striking the figure '30', and inserting in lieu thereof the figure '50', so that the end of line 12 and 13 will read: 'The Senate shall consist of not more than 40 nor less than'—excuse me—'not more than 50 nor less than 53 members.' Signed, Davis."

**CHAIRMAN GRAYBILL:** Now, you've got that backwards. It's 53 and 50 members, Mr. Clerk. The sentence should read so that the Senate "will consist of not more than 53 nor less than 50 members of the House." Okay? That right, Mr. Davis?

**DELEGATE DAVIS:** Yes, Mr. President. Would you want to finish the rest of it at one time on the House? Would that be permissible?

**CHAIRMAN GRAYBILL:** Yes, I think we should finish it, but I don't see where it goes.

**CLERK HANSON:** "And further amend on line 14 by striking the figure '80', and inserting in lieu thereof the figure '106'; and further amend in line 14 by striking the figure '60', and inserting in lieu thereof the figure '100', so that the last will read: 'the House of not more than 106 members nor less than 100 members.'"

**CHAIRMAN GRAYBILL:** Very well, Mr. Davis' amendment has the effect of changing the bracketed figures in the Senate from 40 to 30 and making them 53 to 50, and in the House that are now 80 and 60, and making it 106 and 100.

Mr. Davis.

**DELEGATE DAVIS:** Mr. President, fellow delegates, it is the proposal here to have the House of Representatives the same as this body is here. That's the present law in the State of Montana that has been approved by the court, although presently on appeal, and the Senate 50 members. Now, we've doubled the 50 to be 100 and we've doubled the not more than 53 in the Senate to be 106 in the House. I will not repeat the comments of this afternoon other than to say this has been judicially approved. I would be hopeful that the State of Montana could continue until after the 1980 census to work on this basis, unless there's something that's inherently wrong with it or unless the court repeals it. Also, I think we have a unicameral system of 100. I think the House in a bicameral system should be 100. If it goes to the vote of the people of the State of Montana, let it go on its merits not on less in one or more than another. Let it be represented. Let's get a true reaction of the people as to whether they want this or not. I think it relieves the Legislature of a great burden. I'm hopeful we won't have a vote on it in this chamber. I think when we are so presumptuous in this chamber to feel that if a bill didn't pass it was because the Legislatures did not know the will of the people in their respective communities, could be a grave error. They may have been reading the mail exactly right when they turn down these many proposals that you or I may think that've been good at that time, that they were not what the people wanted. So let's submit this to the people on its merits on the ballot and let them decide as a fair shake all the way around. Thank you.

**CHAIRMAN GRAYBILL:** Is there further discussion on Mr. Davis' amendment? Make the Senate 53-50, and make the House 106-100. Very well—

Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I'm not going to repeat my talk of this afternoon, but as a substitute motion, on line 14, I move to amend "53" to "50"; and "50" to "45"; so we'd have a possibility of 50 and 45 the lower limits. And in line 15, amend that to "90" and "90" and the last number "100". No, that isn't right. One hundred. Yes, the first number would be 100 and the second one 90.

**CHAIRMAN GRAYBILL:** Very well, Mr. Aasheim's substitute motion is to make the Senate bracket 50 and 45 and the House bracket 100 and 90. So the brackets in the Senate would be 50 as a maximum, 45 as a minimum; in the House it would be 100 as a maximum and 90 as a minimum. Those limits are higher than the limits in the majority proposal, but they're lower than Mr. Davis' limits.

Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman, I rise in support of Mr. Aasheim's motion. The cowboys down in Powder River will like that.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH.** I would like to ask Mr. Aasheim if he would yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Aasheim?

**DELEGATE AASHEIM:** I yield.

**DELEGATE HARBAUGH:** Mags, in considering both of these proposals in your committee, I wonder if one of the factors involved was that of reducing the total size of the legislative body, and what is your feeling? Do you feel that, generally, the committee felt that a reduced size was favored over all?

**CHAIRMAN GRAYBILL:** Mr. Aasheim —you...(Inaudible)

**DELEGATE AASHEIM:** I think we had mixed feelings about this. We had a minority report which wanted more and I was happy with 40 and 80—80 would be the top for the House and 40 the top for the Senate, and I think maybe, counting, I think we probably had 3 for my proposal and maybe 3 for the minority and then some (Inaudible) in between. So this is really a compromise in this area.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** I'm concerned that possibly by raising these figures to a limit that is quite a lot above, at least with Mr. Davis' amendment, quite above—a lot above the figures that the committee reported out, that perhaps we are weakening the appeal of the bicameral proposal, and I think that we ought to consider that.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman. I, too, had a minority report here. I didn't intend to get up and talk at all because I usually get shot down on everything today. But these figures that are in the proposal are there because the unicameral people outvoted us in the committee and this is what it amounts to, and that is the reason for the minority report. Both the proposals were written mainly by the unicameral people in the committee. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Well, Mr. Chairman, I'm somewhat concerned about the proposal that I have before me. I look to it for guidance and I assume that a considerable amount of study went into its preparation. I'm looking at page 41, and I would ask at this point if Mr. Aasheim will yield for a question?

**CHAIRMAN GRAYBILL:** Mr. Aasheim?

**DELEGATE AASHEIM:** I will.

**DELEGATE DAHOOD:** Mr. Aasheim, I am informed through your committee report on page 41, and I'm reading from it: "A lesser number of 60 to 80 in the House and 30 to 40 in the Senate will make for a more dedicated and more qualified membership. Responsibility can be more easily pinpointed in the smaller body. The smaller body will decrease the amount of legislation introduced, and will also make a more functional lawmaking body." Those reasons appeal to me. May I ask why the change at this time?

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman, in my opinion it is not changing and I'll assume the full responsibility for those words. Those are my—that's an expression of my feeling and I think maybe that I was alone amongst the bicameralists in recommending the smaller number, because I told my constitutents that I felt the body was too large at 104, at 100. I thought 80 would be adequate. They didn't argue with me and I'll go back home and I'll still defend my position, but right now, I can see where 40 and 80 is not satisfactory to this body, and I'm willing to compromise to recommend the 45 to 50 for the Senate and 90 to 100 for the House. I have been in this House when it was 92 or 94 and I felt at that time that Montana was well represented in the House, and I think that 90 would certainly give good representation. And you may ask again, how come we aren't agreed. There were 14 people in that committee and they were sincere in their opinions like I'm sure you people are tonight. You are sincere and you have your convictions and this is a matter of conviction. You can't look in the books and find what the right answer is. You're just going to have to use your good judgment, and I think 45 to 90 would be a good compromise.

**CHAIRMAN GRAYBILL:** Mr. McKeon.

**DELEGATE McKEON:** Mr. Chairman, I urge retention of the figures in the majority proposal. I understand the problems of the rural people; however, I don't think by additions we're going to solve the fact of life in the State of Montana, that the cities grow and the population of the rural areas diminish. Also, Mr. Chairman, I campaigned on the platform of bicameralism with the condition that I would come to the Convention and urge that the size of the Senate and the size of the House be reduced greatly. I am satisfied with the majority proposal and for the reasons espoused by Mr. Dahood and the other reasons are shown by the statistics that the smaller bodies are much more effective. I do urge retention of the majority proposal. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROBERT HANSON:** (Inaudible)...Mr. Aasheim yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Aasheim?

**DELEGATE AASHEIM:** I will.

**DELEGATE ROBERT HANSON:** Mr. Aasheim, I notice these figures are all in round numbers and I know, during the last election in the House we had of the 104 members that was divided 55-49. And if it had been 3 different, it would have been 52 to 52. Now which party would have been the party that was in charge of the operation of the House, which could go to the Senate if it were bicameral or this would apply to a unicameral body. Don't you think it would be wise if we're going to do all of this, that you should end up somewhere with an odd number or some provision in the Constitution, because we came within 3 of having a 52-52 break in the House this last time?

**DELEGATE AASHEIM:** Mr.—

**CHAIRMAN GRAYBILL:** Hanson.

**DELEGATE AASHEIM:** —Hanson, I don't believe you could have an odd number in both cases. You'd have to have an even in one and odd the other. You see, it would be 45 in the one and 50 in the other, half and half, and I don't think you could have an odd number in both of them.

**DELEGATE ROBERT HANSON:** Then as our present situation the Lieutenant Governor votes in case of a tie, but under the new proposal he will not be a member of the Senate, I think, and so you could have a problem there, too.

**DELEGATE AASHEIM:** Mr. President, may I answer that?

**CHAIRMAN GRAYBILL:** Mr. Garlington was up next, Mr. Aasheim.

**DELEGATE GARLINGTON:** Mr. Chairman, I am getting very troubled about the course that this is taking, and I fear we're prejudicing our entire constitutional operation by this affair. I'm a perfect guinea pig for this business of choosing between uni- and bi-. I came here with my mind completely open and I wanted to hear what the people had to say on the one side and on the other.

**CHAIRMAN GRAYBILL:** All right, now Mr. Garlington, the Chair would like to ask you if you're discussing Mr. Aasheim's substitute amendment?

**DELEGATE GARLINGTON:** Well, this relates to the matter of size—

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE GARLINGTON:** —because this is where it cuts, it seems to me. Size relates to efficiency, and it has been pointed out here that with a reduced size there are economies affected which make for more research and more efficiency in the production. And I think we all know, the larger the group the tougher it is to get something hammered out and accomplished. We must remember now we have taken off the shackles as far as the duration of these sessions are concerned. They now meet every year, they can meet for 80 to 90 legislative days, they can extend sessions on their own. The cost is doubled over what it has been before. Now, we suddenly have put ourselves in the position of where, on a unicameral basis the limit is 100 to 105, and now we're saying that on the bicameral basis it will be substantially 150, which is a third higher—50 percent higher than the other. And when you try to justify that to the public, I think we're going to have a real hard time doing it. Now, I came here with the idea that we could either have the choice of a unicameral body of about 100, which would acknowledge the need of the rural areas for representation, or if we thought it was more efficient to have the double size, we would reduce this hundred into two houses of 66 and 33 or thereabouts, and that was the complexion of the report as it came in. Now, suddenly we're changing it and I want to sound the alarm that if we do it on this basis, then we all of a sudden boost the cost by 50 percent. We are committing ourselves to a very dangerous course and I want to call the alarm while there is yet time.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President, in regard to my good friend Mags' amendment, we were going to have in either one under this plan 100 districts and in the unicameral you have 100 districts, in the bicameral you have 100 districts—they elect one from each district. In the bicameral then, you have two districts for the Senate like we have now. If you reduce your bicameral, you're going to have to have smaller districts. The only way a smaller number—you have to have a greater area district and that way you have to incorporate larger numbers and increase—put more rural area in with the populated centers. As I said this afternoon, this is to strike some balance of harmony between the city, the populated city, and the rural areas. I agree it's a fact of life that you can't change the numbers, but under a single member district all of Montana will be represented in this manner. The efficiency argument just cannot be denied. Russia has a very much more efficient way and so has China. We're trying to give all these people the right to be represented when they do come here in whatever form that we do elect.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I agree with Delegate Garlington that the numbers chosen here may chart a dangerous course. I submit that it will be extremely dangerous if the people of Montana are not given the opportunity of retaining the present government that they know, and I'm speaking of a bicameral, two-house system with precisely the same size that they have now which has been apportioned and districted by our Legislature, has withstood its first federal court case. I submit that the majority report, if those numbers are adopted, would give the people of Montana a choice of a unicameral with a reduced size, or a bicameral with a reduced size, and no option to select from the present form of government with the present size. For that reason, I would support either of the amendments and oppose the majority report.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, I rise to support Mr. Aasheim's substitute motion —for the figures 50 and 45, and 100 and 90. And so far as any increased costs are concerned, it won't be increased over what it has been. We have had those figures operating here in our state Legislature, and as Mrs. Robinson pointed out the other day, that's less than 1 percent of the cost of state government, so I don't think cost is any argument in this matter, and I believe that if we leave those figures there that the bicameral then has the best chance, so far as their proponents are concerned, in trying to sell or to get the people of the State of Montana to adopt the bicameral system, if both go out for people's consideration.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Aasheim's substitute amendment.

**DELEGATE ROMNEY:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** I wish to say a few words about this. First of all, we're endeavoring to get the best program we can for both unicameral and the bicameral on the ballot. What are the people who vote on this proposition going to say when they see two sets of figures for the House, one that we adopted this afternoon considerably larger than the other? They're going to say, "Well, this is a loaded game," and they're not going to like it; and one or the other of the programs is going to suffer. As was adopted this afternoon, a larger number of representatives for the unicameral was adopted. Now we're talking about, in the proposition offered by Delegate Aasheim, of reducing it so that it would be lower in the bicameral than in the unicameral. This would get the people who are penny conscious among the voters more likely to vote for the bicameral than for the unicameral, and perhaps that is the carrot that is being offered. Now, let us consider a minute the money. Mrs. Robinson, this afternoon I believe put a figure of one and a half million, roughly, on the cost of the last Legislature which ran into extra time. Now, that is a lot of money, and it's the most that we ever had, but everything is costing more. I have the last budget book in my hand. Let us see, for example, the Judicial branch of the government. I think the Supreme Court of 5 and the judges numbering 26, in the 1969 biennium, there was expended for that judiciary $720,097 in 1968, and in 1969, 721,219. In the 1971 biennium, the expended amounted to for 1970, 881,564. And at the time the book was printed, the anticipated was 897,100. The 1973 biennium anticipated—or recommended, pardon me—was $941,480 for 1972, and 910,875 for 1973. Now here in one branch of government, the important judiciary, they have recommended 1,800,000 odd, for the next biennium. Now it seems to me, this goes through—I just picked the judiciary because it was handy and of small number—31 people as compared to 150, odd, in the last Legislature when they spent 150,000,000—1,500,000 in round figures. Now, I don't think that we should be frightened by this money business, because it's going to be more and more all the time as long as this inflationary trend is continued. But the people who vote on this are not handling 1,500,000 or 1,800,000. They are thinking about the cost of beef steak and potatoes and one thing another, and they are going to be motivated perhaps by this carrot that is offered to help one side as against the other in the voting on June 6th. I think that, based upon a principle of equity, we should have approximately the same number of people in the House of a bicameral as you have in the House of a unicameral, and that was decided this afternoon. Now, the bicameral proposition, which we want to have just as fair as the other, is going to suffer unless we do something to equalize it, and I object to—the substitute motion of Delegate Aasheim, and trust that the original motion of Delegate Davis prevails.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President, I agree with Carl Davis' motion and oppose Mag Aasheim's because I think that we should have some consistency; and if we don't agree to the figures that Mr. Davis has put in, then I think we should reconsider the action we took this afternoon in increasing the unicameral Legislature to the point that we did.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, it appears to me as though we are actually giving the voters three choices. You have the choice of the present system in the old Constitution. You've got the choice of a bicameral system, meeting annually with at least 90-day sessions. And you have the choice of a unicameral system of perhaps 100 members or more meeting also 90 days annually. If you accept Mr. Romney's figures and you apply them to the bicameral system with a membership of approximately 100 in the House and 50 in the Senate, you will double the cost of the legislative sessions in the foreseeable future. In other words, instead of costing one and a half million dollars for the Legislature under the present system if it's biennial, it will cost in the vicinity of three million dollars. Now, these costs are getting excessive and these costs in my mind will be very relevant in the minds of the voters when they come to compare these three systems. If those of you who would retain the bicameral system want it retained on an annual session basis, then it would seem to me only logical that you're going to simply have to cut down the number of members in that session. If you don't, I think the voters will cut it down for you, and you may also cut down every reform that you anticipate in this new Constitution.

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman, I rise to a point of order. In the report that I have, there's a minority proposal and a minority report which, as far as I know, we haven't considered. Hasn't it been customary in our proceedings here that after the majority proposal is made that a—that the minority proposal is then considered first?

**CHAIRMAN GRAYBILL:** Mr. Arness, you may be entirely right, but I only recognize the people that rise. And if the minority wants their proposal considered, they'd better rise and make it.

**DELEGATE ARNESS:** Mr. Chairman, as I understood Mrs. Bates' remarks earlier, that was what was intended. Maybe I didn't exactly comprehend that, but her remarks seemed to me to be an author of their minority proposal Number 2 that appears on page 54.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, we have Mr. Davis' report now or his substitute motion which is almost the same, and in regards to the size of the Legislature, in talking to the people at home, many people did say we want less people up here, we want a smaller Legislature. But when you ask them, do you want less representatives, and immediately "No." It's just like taxes. It's fine as long as the other fellow pays them, but when we lose our representation we don't want this to happen to us. That's all right for the person in town. And I support a large body.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you Mr. Aasheim's substitute motion that Section 2 of Article V of the bicameral Legislative proposal be amended so that the Senate limits are 50 as a maximum and 45 as a minimum; 100 maximum in the House and 90 minimum. So many as shall be in favor of that motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and that motion fails.

**UNIDENTIFIED VOICE:** Division.

**CHAIRMAN GRAYBILL:** All right, we'll have a division, but no roll call. So many as are in favor, say Aye; opposed, No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** 68 having voted No and 28 having voted Aye, it's defeated. Now, we're back considering Mr. Davis' amendment. His limits are for the Senate 53 at the top and 50 at the bottom; for the House, 106 at the top and 100 at the bottom. So many as shall be in favor of Mr. Davis' amendment please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** Chair is in doubt. We'll use the voting machine. If you're in favor, vote Aye. If you're against, vote No, on Mr. Davis' amendment. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** 55 having voted Aye and 40 having voted No, the motion carries. We're now on Mr. Harper's motion that when this committee does arise and report, after having under consideration Section 2, as amended, that it recommend the same be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.

**DELEGATES:** (No audible response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Will the clerk please read Section 3 of the bicameral Legislative Article V?

**CLERK HANSON:** "Section 3, Election and Terms of Members: A member of the House of Representatives shall be elected for a term of 2 years and a member of the Senate for a term of 4 years. One-half of the senators shall be elected every 2 years. The term of the members shall begin on a date provided by law." Mr. Chairman, Section 3.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, when this committee does rise and report, after taking under consideration Section 3, I recommend do pass, Mr. President.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** This section is almost identical to the present structure of four-term senators with one-half being elected in each general election.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you on the motion of Mrs. Bates that when this committee does arise and report, after having under consideration Section 3 of Article V of the Legislative bicameral proposal, that it recommend the same be adopted. So many as are in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (No audible response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Very well, we've finished with the unicameral-bicameral. Now, there are several people who have indicated to the Chair they want to propose new Legislative sections. The first is Mr. Habedank. Mr. Habedank, may the clerk read your proposal?

**DELEGATE HABEDANK:** (Inaudible)

**CLERK HANSON:** "Mr. Chairman, I move to amend the majority unicameral proposal of the Legislative article by the addition of the following section on page 9, line 6 of the proposal: 'Section 17: Referendum of Unicameral Legislature, subparagraph 1: Six years after the provisions of this article shall go into effect, the secretary of state shall place upon the ballot at the next following general election the question, quote, Shall the unicameral legislature form be continued? end quote. Subparagraph 2: If a majority of the qualified electors voting on the question answer in the affirmative, the form shall be continued, and this section shall be on no further effect. Subparagraph 3: If a majority of the qualified electors voting on the question answer in the negative, the provisions of Section 1, Power and Structure; Section 2, Size; Section 3, Election and Term of Members; Section 10, Organization and Procedure; Section 14, Impeachment; and Section 15, Districting and Apportionment, as set forth in the bicameral legislative proposal shall be substituted for Sections 1, 2, 3, 10, 14 and 15 of this unicameral article and be controlling upon the composition of future legislative assemblies. Subparagraph 4: The members of the unicameral legislature shall remain in office and their authority to act continue until their successors to a bicameral body can be elected and qualified. Subparagraph 5: The present Senate chamber shall remain intact until such election has determined whether the unicameral legislature is continued.'"

**CHAIRMAN GRAYBILL:** Very well—

**CLERK HANSON:** Signed by Habedank.

**CHAIRMAN GRAYBILL:** Purpose of Mr. Habedank's amendment is to add a Section 17 dealing with a referendum on the unicameral system 6 years after the adoption of the unicameral system if that's what's adopted by the people.

Mr. Habedank.

**DELEGATE HABEDANK:** Thank you, Mr. Chairman. You've all had this amendment on your desk for a couple of days and I'm not going to extend this matter by a long speech. I have been going back and forth like a yo-yo as between unicameral and bicameral. Before I came here, I discussed this matter at length with legislators in whom I have the highest regard. Almost universally, they favor a bicameral system because of what they claim is the checks and balances. The legislators, by and large, who have served previously in the Legislature and who are members of this Constitutional Convention I feel, still feel this way. However, the arguments in favor of unicameralism are cogent and I feel that the people of the State of Montana may well be disposed to adopt a unicameral Legislature, or this body could, by its action, if the people would ratify it, adopt a unicameral Legislature. We heard a very excellent talk this afternoon by Magnus Aasheim about something we have not tried. I think the people of Montana should be given an automatic referral so that if they do try this, they can see how it works for 6 years, and then without any petitions being circulated or anything else being done, they will have a chance to analyze what they have done on the basis of performance and either continue it or discontinue it. And that is the reason for my amendment. I think the thing should be considered in its entirety because I feel anything in here that isn't exactly in accord with the two measures as they've been written up—or are to be written up by Style and Drafting—can be corrected. I have added, as you have noted in its being read, Sections 10, 14 and 15 which, as far as I can see, are the only sections of the bicameral measure which would have to be picked up. Section 2, if the majority accepts this measure, accepts the unicameral form that ends it. If they don't, then we go back to the bicameral. Section 4 is put in there so that we will not end up without having a Legislature that's not in office before their successors can take effect in the event we go back to a bicameral measure. Section 5 is put in there to prevent anything happening to the present Senate chambers during the 6 years that this is being tried out, so that we have it intact if we want to go back to the bicameral system. And if we don't go back to it, of course, then they can do as they please in the future. I would urge your support of this amendment.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, I move to amend by saying—when I get far enough away—I can't read it—instead of 6 years, in the beginning of Section 17, subsection 1, in 1980. This is a—I'll speak to what—either that or—I started to say 8 years, but then I realize that wouldn't be 1980. The census will be coming up in 1980. It'd be a time when we would face reapportionment. We have voted to have, if we go to unicameral, 4-year terms and this would give two legislators two full legislative terms and maybe a good chance to see it, rather than one and a half and then have a sort of—almost a lame duck affair, maybe, in the end of the second term.

**CHAIRMAN GRAYBILL:** Is there discussion of Mr. Harper's proposed amendment, "1980"?

(No response)

**CHAIRMAN GRAYBILL:** If not, all in favor of Mr. Harper's amendment changing it from "6 years" to the year "1980", please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No. (Laughter)

**CHAIRMAN GRAYBILL:** All in favor say—vote Aye and opposed vote No on the voting machines. We're changing it from "6 years" to "1980", which makes it about 8 years. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Close the vote. It's 48 to 46, Aye, so it is adopted. So, we've now amended Section 17, sub. 1, to read "1980". Is there further discussion of Mr. Habedank's proposed Section 17?

Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman, I rise in support of the motion made by Mr. Habedank. After we finished with these two proposals, I still believe as I did before; that you can't support a bicameral Legislature in this country anymore, and the reasons, I think, are these. One, a bicameral Legislature costs considerably more; two, there's no justification for that cost. Addressing myself to the latter question first, it seems to me, to justify the bicameral Legislature, you have to be able to show that it in some way checks the other house, and I don't think you can point to any facts which show that it does. As pointed out in the comment, 90 percent of the bills killed in the last Legislative Session were killed in the house of origin. Now, what about these other 10 percent? Were they killed because they were bad bills, and are there any facts that can show that they were? I think legislators generally admit that there is a lot of buck-passing that goes on. In other words, they'll pass a bill from one house to another, just to have it taken care of. We heard testimony to that effect in the committee. One of the legislators who testified last time, he said, "We were lucky the House was there to kill that one bill you passed over." One of the house members replied to that—he said, "Yeah, when that bill arrived in our house one of our men commented, 'The audacity of you guys to send that over here'. And we immediately breathed life into a bill that was dead in our house and sent it back over to your house." I think the bills Mrs. Robinson introduced tonight are good examples of that. Here's two consumer protection bills essentially the same. They passed the initial house in both instances and the initial house being the Senate and the House of Representatives; but when it got to the final house it was killed. When it comes time to bite the bullet, they vote differently than if they can pass it onto somebody else. Another reason I think bills are killed in the second house sometimes is the sponsor in the first house has done all the research. He knows what the merits of the bills are, what the merits of his bill are, and he's prepared to discuss it. I've seen in my observations as a lobbyist a gentleman who had to carry a bill in the second house know nothing about it. Someone gets up and asked him a couple of questions about if, he can't answer them, it's killed. And, I know as a lobbyist, you can use the time limit here to kill bills in the second house. The first year I lobbied, I was asked by a client to attempt to kill a bill. I went up to the committee hearing in the house of origin and pointed out what I thought were the inequities in the bill and thought it would be killed. To my surprise, it came out greatly amended and eventually passed. In following years, I've learned if I think the bill has merit but has inequities in it, you wait until the bill gets to the second house when there isn't time to bring it back; you point out the inequities at that time and the bill is killed. Finally, who's to say the bills that are killed in the second house are bad bills? As has been pointed out many times here, the legislative audit is an example of a good bill that was killed many times getting through this Legislature, and assuming a second house is some type of a check on the first house, is it really needed, when you have the checks of executive veto, judicial review and the peoples' right of referendum? I submit it is not. An example that was used in testimony to us was that, assuming we had a one-house Legislature and a Republican Governor, the sales tax would've passed last time. Anybody with any sense knows that it's the people with their right of referendum would have vetoed that. I think the argument that lobbyists control a one-house Legislature easier than a two-house has been adequately answered, and I won't comment on that. But one other thing I heard here this afternoon was, does a one-house Legislature pass hasty legislation? I'll submit the one-house Legislature of the type we propose won't pass any legislation any more hasty than what goes through—or what has gone through this house during past sessions. Whether legislation is hasty or not is determined by the time you give legislators to consider. For example, the bills that went through this house last time had to be cleared through here in about, say, 45 days on the average if the Senate was even going to take a look at them. Consider our situation here, how much faster we would have to work if we had another body sitting over there that was going to review our bills and for what period of time. Finally, then, there being no real argument, I don't think, that a second house checks a first will, by deleting the second house where you save money. I think that should be obvious. By not having to run bills through two houses you save time, you should save money. You definitely, and no argument can logically be made against this, you do eliminate the end-of-a-session logjams. And, finally, you can reduce the size in a one-house Legislature without reducing representation. I think, comparing the two proposals we adopted here today, rural representation is still protected in a one-house Legislature. Proportionally, it will be the same. Then, I had a fiscal note prepared by the budget director downstairs and had him compare a bicameral Legislature meeting for 90 days at the current cost to the last Legislature of 150 members, and compare that to a unicameral Legislature of 100 members. The cost in the case of the bicameral Legislature would be $1,430,000, using round figures; the cost of a unicameral Legislature would be $900,000, using a round figure. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Habedank, would you look at your amendment?

**DELEGATE HABEDANK:** Yes, Mr. President.

**CHAIRMAN GRAYBILL:** In the second line where you say "this article will go into effect", I think you must mean "this section will go into effect". May we make that amendment?

**DELEGATE HABEDANK:** Yes, you may. I would appreciate it—maybe everybody else got—

**CHAIRMAN GRAYBILL:** The way I have it now it reads, "In 1980 this section should go into effect and the secretary of state should place on the ballot." Now, if there is no objection, we'll make that interlineation. He calls it an article but that would take care of the whole Article V and I don't think you meant that. You just want this section to go into effect for the election purposes in 1980, right?

**DELEGATE HABEDANK:** This is correct.

**CHAIRMAN GRAYBILL:** Is there any objection to that?

(No response)

**CHAIRMAN GRAYBILL:** Hearing none, we'll make that amendment. All right.

Mr. Felt.

**DELEGATE FELT:** Mr. Chairman, regardless of the respective merits of bicameral versus unicameral, I feel very strongly that the proposal by Delegate Habedank is of great importance to the possible acceptance of the entire Constitution that we propose by the people. No doubt that argument will be made and can be made regarding many different individual parts of this document that we are preparing, but it's an escape hatch for a lot of the people that I feel close to in my area and throughout the state. They, generally speaking, are not as much interested in government or in what we're doing as I might wish they were, but they seem to be interested in this question of unicameral versus bicameral; and while intrigued at least by unicameralism, they tend to accept the status quo. They don't receive much of anything from government, or don't believe that they do, and they're not wealthy enough to be able to afford to pay what it costs without it hurting, so they take a look at the economical aspects perhaps to a greater degree than I think might really be warranted, too. And if they are inclined to go for this, and if they think there's a chance that unicameralism will be tried out, they will feel much better if they know that after some trial period everybody can take another look at it. And those who think, "All right, it may work but I'm not sure," are likely to go along if we include a provision like this. It does no harm, certainly, if bicameralism is accepted and I (Inaudible)...very strongly urge your serious consideration of this proposal.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** Mr. President, I just want you to read Mr. Habedank's motion again, please.

**CHAIRMAN GRAYBILL:** I'll read it before we vote.

Mr. Blaylock, if you want to say something.

**DELEGATE BLAYLOCK:** Yes, I wanted to ask if Mr. Loendorf would yield to a question.

**DELEGATE LOENDORF:** I yield.

**DELEGATE BLAYLOCK:** Jerry, you feel very strongly for a unicameral and feel that it has a great many advantages. If you're that positive, then, I would take it we should vote against Mr. Habedank's motion.

**DELEGATE LOENDORF:** Let me say that to this. I feel I can find no justification for the bicameral system any more, but when we're talking about something like that in the future I can't say as an absolute certainty it will result as the best system. That's why I support his motion. If we try it we might like it.

**CHAIRMAN GRAYBILL:** Mr. Habedank's motion reads like this: "There shall be a Section 17 on the unicameral Legislative Article, which reads as follows: 'Subsection 1: In 1980 this section shall go into effect and the secretary of state shall place upon the ballot at the next following general election the question: Shall the unicameral legislative form be continued? 2: If a majority of the qualified electors voting on the question answer in the affirmative, the form shall be continued, and this section shall be of no further effect. Section 3: If a majority of the qualified electors voting on the question answer in the negative, the provisions of Section 1'—and then he names them—'2, 3, 10, 14 and 15, as set forth in the bicameral legislative proposal shall be substituted for Section 1, 2, 3, 10, 14 and 15 of the unicameral article and be controlling upon the composition of future legislative assemblies.' In other words, if the people vote No, then we switch to the bicameral that's been proposed here. Then subsection 4 says: 'The members of the unicameral legislature shall remain in office and their authority to act shall continue until their successors to a bicameral body can be elected and qualified.' And Number 5 says: 'The present Senate chamber shall remain intact until such election has determined whether the unicameral legislature is to continue.'"

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman, I don't particularly care to argue with you, but on that first subsection I would like to make it read: "In 1980 the secretary of state shall place upon the ballot the question." I think it would make more sense.

**CHAIRMAN GRAYBILL:** Very well, in 1980—leave the section and all out?

**DELEGATE HABEDANK:** Yes.

**CHAIRMAN GRAYBILL:** "In 1980, the secretary of state shall place upon the ballot at the next following general election the question: 'Shall the unicameral legislature form be continued?'"

**DELEGATE HABEDANK:** Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, now, so many as are in favor of Mr. Habedank's amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as opposed, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it and the section passes. The Chair will recognize Mr. Arness, who has an amendment. Mr. Arness, may we read your amendment?

**DELEGATE ARNESS:** (Inaudible)

**CHAIRMAN GRAYBILL:** And is it Section 17? Is that it?

**DELEGATE ARNESS:** Yes, it would be Section 17 then.

**CHAIRMAN GRAYBILL:** And did you tell me that Section 8 we can ignore?

**DELEGATE ARNESS:** Yes, it'd be the first paragraph on the sheet.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE ARNESS:** It starts out, "Conflicts of interest."

**CHAIRMAN GRAYBILL:** Very well. Mr. Clerk.

**CLERK HANSON:** "Mr. Chairman, I move to amend the Legislative proposal on page 9 by adding the following new paragraph: 'Section 17: Conflicts of Intent [Interest]. The legislator—'"

**CHAIRMAN GRAYBILL:** Mr. Clerk, let's make that Section 18 since we just adopted 17.

**CLERK HANSON:** "Section 18."

**CHAIRMAN GRAYBILL:** Very well.

**CLERK HANSON:** "Conflicts of Intent [Interest]. A legislator who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly shall disclose the fact to the house of which he is a member and shall not vote thereon. No legislator, nor anyone associated in a partnership or business association with a legislator, nor anyone related to any legislator by—"

**CHAIRMAN GRAYBILL:** "Consanguinity."

**CLERK HANSON:** "—consanguinity or affinity to the first degree may practice before any regulatory agency of the state, nor enter into a contract for the payment of money with the state, nor register to lobby the legislature of the state."

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman, the first sentence of the proposal is the existing Section 44, Article V, of the present Constitution which provides, of course, that legislators may not profit by their votes in the Legislative Assembly. The remarks that Delegate Aronow made earlier in regard to the disqualification of legislators, of course, would apply with equal force to this section. It seems to me that it would be a mistake, especially since we have made the Legislative Assembly now a longer and more powerful body, regardless which way the vote goes on the number of houses, that we should not require them to be at least as ethical as the members of our existing Legislature. The second sentence, of course, is a good deal more stringent than the existing language or the existing provisions so far as conflicts of interests are concerned. It seemed to me, again, that since we have so strengthened the Legislature and made it into obviously a more powerful and very possibly a continuous body, that the more stringent regulations should not work any hardship on the legislators and it would be a necessary protection so far as the public is concerned. The matters that are dealt with here are matters of an ethical nature. They could not be dealt with—certainly should not be dealt with by a statute. I think that it is proper that the Constitution should set out a moral imperative so far as the Legislature is concerned and that is the intent of this proposal. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there any discussion of proposed Section 18?
Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman, I'd just like to point out the reason the committee omitted these provisions, or deleted them from the present Constitution. Or I should say recommended that, is because they are encompassed in Title 94, Chapter 29, and in that particular provision of the Revised Codes of Montana, their violation is made crimes. The present provision in the Constitution, Section 44, its violation is made a misdemeanor. Sections 41, 42 and 3, the violation of those provisions is made a felony with the punishment of 1 to 10 years in the state prison. I just point that out. I don't necessarily oppose the motion.

**CHAIRMAN GRAYBILL:** Is there further discussion of the proposed Section 18?
(No response)

**CHAIRMAN GRAYBILL:** If not, so many as shall be in favor of the proposed Section 18, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and so ordered. Mr. Mahoney has a proposed amendment. Mr. Mahoney, may we read your proposed amendment?

**DELEGATE MAHONEY:** (Inaudible)

**CHAIRMAN GRAYBILL:** —clerk please read Mr. Mahoney's amendment?

**CLERK HANSON:** "Mr. Chairman, I move to amend the Legislative proposal on page 9 by adding the following new paragraph: 'Section 18' Insert the present Section 34—quote, No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof, except interest on the public debt, unquote. Signed, Mahoney."

**CHAIRMAN GRAYBILL:** Mr. Clerk, I don't have that on my copy. Where does it go? Read the first part.

**CLERK HANSON:** It would be an amendment to the Legislative proposal on page 9 by adding the following new section.

**CHAIRMAN GRAYBILL:** So it would be a Section 18. We'll make this a Section 18. As I understand it then, Mr. Mahoney, you want a Section 18 added to the Legislative proposal that would say: "No money shall be paid out of the treasury except upon appropriations made by law, and on warrants drawn by the proper officers in pursuance thereof, except interest on the public debt." Is that correct?

**DELEGATE MAHONEY:** That's correct, Mr. President.
Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** I think that this is a good precaution to be sure that the Legislature handles the purse strings of this state, and they make all appropriations where we don't know what could happen. I just don't like to let this little article get out of the Constitution so that every appropriation that's expended must be made by the Legislature. That's all I have to say on it.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman, I'd again like to explain the committee's reasoning in deleting this particular provision. First of all, no state agency can act without authority from law and appropriate money. Secondly, I'd like to point out that Section 9, or Section 79-202, of the Revised Codes of Montana, provides: "Except as herein provided, no money received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor and the state auditor shall not issue his warrant upon the state treasurer except upon a claim duly approved by the state controller in accordance with laws, et cetera."

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** (Inaudible)...I didn't quite hear that amendment, but I wanted to mention that in our proposed article we have one that reads like this: "The legislative assembly shall enact the necessary laws to insure strict accountability of all revenues received and money spent by the state, subdivisions and districts thereof." I don't know if that'd do the same thing or not.

**CHAIRMAN GRAYBILL:** Is that in your proposal, Mr. Rygg?

**DELEGATE RYGG:** It's in our proposal, yes.

**CHAIRMAN GRAYBILL:** In the Revenue and Finance proposal?

**DELEGATE RYGG:** In the Revenue and Finance proposal.

**DELEGATE MAHONEY:** Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** All I'd like to do is to see that it's going to be in the Constitution and I don't want this statute. This is one thing. The Legislature can come in and all of a sudden can change the law. Now, all I'm trying to do is get the people protected that the Legislature must appropriate the money out for the running of this state. And I don't want a Legislature to come along and all of a sudden decide that all of a sudden we're going to let somebody else appropriate money. All I'm trying to do is just hold that little section; and it's a very short and it's not so big that we can't print it in the Constitution. I don't think it would break the State of Montana to put this little article, safeguard back in.

**CHAIRMAN GRAYBILL:** Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman, I rise to support Delegate Mahoney on his amendment from the standpoint of I think that this is something that's very necessary to be in the Constitution, whether it is in a section like this or a section that comes out of Revenue and Finance. If it is put in some other place in some other section, when we come around on final reading and we know what's going to be there, then we can delete. But I think it's something that should be there.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mr. Mahoney's—

**DELEGATE MAHONEY:** Roll call.

**CHAIRMAN GRAYBILL:** Roll call, all right. Section 18—the proposed Section 18 says: "No money shall be paid out of the treasury except upon appropriations by law and on warrant drawn by the proper officer—in pursuance thereof, except interest on the public debt." We'll have a roll call vote. So many as shall be in favor of this proposed Section 18, vote Aye, and as many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Close the vote. Will you please take the roll call?

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |

| | |
|---|---|
| Babcock | Absent |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Absent |
| Cate | Nay |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Absent |
| Eck | Absent |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Nay |
| Garlington | Nay |
| Chairman Graybill | Nay |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Absent |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Aye |
| James | Absent |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Nay |
| Sparks | Aye |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 77 delegates voting Aye; 14 voting No.

**CHAIRMAN GRAYBILL:** 77 delegates having voted Aye and 14 voting No, the proposed Section 18 is adopted. Mr. Aronow, did you have an amendment to propose?

**DELEGATE ARONOW:** (Inaudible)

**CHAIRMAN GRAYBILL:** May the clerk read your amendment?

**DELEGATE ARONOW:** (Inaudible)

**CLERK HANSON:** "Mr. Chairman, I move to add a new section to Article V, the new section to be inserted in its proper place in Article V. 'No member or officer of any department of the government shall be in any way interested in any contract with the state or any of its agencies or departments.' Signed, Aronow."

**CHAIRMAN GRAYBILL:** Let's number this Section 19 for purposes of debate.

Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman. The proposed Section 19 I have paraphrased from Section 30 of Article V of the present Constitution. That section deals with stationery, printing, paper, fuel, lights, and remodeling of the Capitol legislative chambers, and that sort of thing. And I have broadened it and I've used the last sentence of the present article—"No member or officer of any department of the government shall in any way be interested in any such contract", and so on. This is another one of these items that I feel very strongly should go into the Constitution. In answer to Mr. Loendorf's last two arguments, I'd like to call to your attention that the reason there are statutes on these matters is because there was, or is, constitutional provisions. If there was no constitutional provision, there may or may not have been statutes. By having it in the Constitution—this is short, and again, it's only three lines, and it does establish a policy and a standard of honesty and fair dealing on the part of officers and employees of state government. May I remind the members of this assembly that only a week or 10 days ago I read about some flap in the paper about some member of some commission having sold two snow plows to the State of Montana. I'm not passing on whether it's proper or improper or what the merits of that situation may be, but I submit to you that this type of a provision in the Constitution may stop that sort of thing, if it's the belief of this assembly that no employee or official of the state should deal with the State of Montana to his own benefit and advantage. I move the adoption of this proposal, Section 19.

**CHAIRMAN GRAYBILL:** Is there discussion?

Mr. Rygg.

**DELEGATE RYGG:** Would Delegate Aronow yield to a question?

**DELEGATE ARONOW:** I yield, Mr. Rygg.

**DELEGATE RYGG:** I just had a hypothetical question. If I were a member of the House and if I owned a car dealership, could I bid on a highway patrol car if this new law were passed?

**DELEGATE ARONOW:** (Inaudible)... take it you probably couldn't but this has not been determined by the courts, and I suppose if it was a bid and you were the low bidder, I don't know why, as long as it was a competitive bid.

**DELEGATE RYGG:** Mr. President, would Mr. Aronow yield again?

**DELEGATE ARONOW:** Yes, sir

**DELEGATE RYGG:** I didn't quite get the answer. You said I could not, is that what you said?

**DELEGATE ARONOW:** Well, that's what I said originally. But it was a matter of a bid and you were the low bidder, the state isn't harmed any. In other words, I take it that the sense of this amendment would be that you couldn't deal with the state to your own advantage from the position of advantage that you might have as a member of the Legislature.

**DELEGATE RYGG:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Toole.

**DELEGATE TOOLE:** —Mr. Aronow yield to another question?

**DELEGATE ARONOW:** Yes, Mr. Toole.

**DELEGATE TOOLE:** This is similar in nature to Mr. Rygg's question. Could a member of the highway commission sell equipment to the State of Montana?

**DELEGATE ARONOW:** Not if he passed on the question of whether or not that equipment should be bought.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** May I direct a question to Delegate Aronow?

**CHAIRMAN GRAYBILL:** Mr. Aronow?

**DELEGATE ARONOW:** I'll yield, Mr. Romney.

**DELEGATE ROMNEY:** I wonder if a newspaper publisher, such as our friend from Livingston, was to receive an order from the State of Montana for legal publications without bids, because they're not ordinarily handled with bids, could he accept it or would he be in dutch?

**DELEGATE ARONOW:** Well, I don't think that is any contract. If he's the only news paper in the county and it's a ordinary legal route advertising in the routine manner, I don't see where he'd be hurt by this.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** Mr. Chairman, would Delegate Aronow yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Aronow?

**DELEGATE ARONOW:** Yes, Mr. Studer.

**DELEGATE STUDER:** As regarding highway contracts again, as a highway contractor I would not be stopped from bidding on highway work, would I?

**DELEGATE ARONOW:** You mean if you're in the Legislature?

**DELEGATE STUDER:** Yes, if I was interested in a construction company in any way, and our firm was only bidding on highway work—same as Mr. Rygg's question. Where we were low bidder, would we be able to do a highway job?

**DELEGATE ARONOW:** Well, it would depend on whether—if you appropriated funds as a legislator for this particular highway project, then bid on the project and used your position of strength as a legislator, position of influence, I'd say no.

**DELEGATE STUDER:** Well, influence doesn't have a thing to do with it when you're bidding, that I know of.

**DELEGATE ARONOW:** Well, I—

**DELEGATE STUDER:** If you're the low bidder, the same as Delegate Rygg was talking about, and you submitted a bid to the Highway Department, which of course is pretty near all federal money, you would be—

**DELEGATE ARONOW:** Well, if it's a secondary road contract, it may not be all federal money. It may not be a contract with the Bureau of Public Roads. It may be a state project.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Would Mr. Aronow yield to another question?

**DELEGATE ARONOW:** Mr. Martin, I'll always yield to you.

**DELEGATE MARTIN:** If a lawyer had a contract with the Highway Department to defend, or to represent the state in a highway condemnation case, would he be subject to this rule?

**DELEGATE ARONOW:** Well, do you mean if he was a member of the Legislature? I don't think if he's a member of the Legislature he should be employed by a state agency.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. Chairman, the Legislative Council study in 1961 and 1962, and again in 1968, recommended that this section be deleted. It is obsolete. Out of 50 constitutions only 8 constitutions have any provision of this sort. It's obsolete, unnecessary, and the Constitutional Revision Subcommittee also recommended its deletion.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** I'm afraid this brings up another question I'd like to ask Mr. Aronow if he would yield.

**CHAIRMAN GRAYBILL:** Mr. Aronow, will you yield?

**DELEGATE ARONOW:** I'll yield.

**DELEGATE RYGG:** Mr. President, Mr. Aronow, I don't know if I'm nit-picking now or not, but the thought occurs to me that most garages have a sort of a contract with the Highway Department in that they agree to sell their parts at a discount. Now, the same hypothetical thing, could I then not sell parts to their shops which would probably be more of a detriment to them than me, as far as that's concerned?

**DELEGATE ARONOW:** Well, I would perhaps amend my proposal after the words, "in any way interested in any contract", and insert there, "other than bid contracts", which might clarify the thing and be of assistance to matters of your car bid to the Highway Patrol or some other state agency.

**CHAIRMAN GRAYBILL:** Mr. Gysler.

**DELEGATE GYSLER:** Mr. Aronow, would you yield?

**DELEGATE ARONOW:** Yes, Mr. Gysler.

**DELEGATE GYSLER:** Could the Governor sell a right-of-way to the state for a highway through his ranch or some of the property he owns?

**DELEGATE ARONOW:** Well, you get into a real conflict of interest there, I can assure you. He can sell it; I suppose if the highway wanted it, they could condemn it as anybody else, but I don't know how to handle the realistic appraisal and that sort of thing.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman, could we have the proposed amendment read again?

**CHAIRMAN GRAYBILL:** "No member or officer of any department of the government shall be in any way interested in any contract with the state or with any of its agencies or departments." Now, do you want it amended to say other than bids?

**DELEGATE ARONOW:** (No audible response)

**CHAIRMAN GRAYBILL:** All right—"shall be interested—in any way interested in any contract other than bids with the state or any of its agencies or departments." If no one objects to the addition of the words, "other than bids", we'll let Mr. Aronow put it in. Any objection?

(No response)

**CHAIRMAN GRAYBILL:** Very well. Mrs. Bugbee.

**DELEGATE BUGBEE:** May I ask Mr. Aronow a question?

**DELEGATE ARONOW:** (Inaudible)...try and answer.

**DELEGATE BUGBEE:** If you take the bids out, then what value does the article have?

**DELEGATE ARONOW:** If you take the bids out? What do you mean? I don't understand.

**DELEGATE BUGBEE:** If you take that clause out, if you eliminate other than—as you said—"except for bids". Doesn't that completely weaken it?

**DELEGATE ARONOW:** It does weaken it but I can also see from the discussion that there are some instances where perhaps a real injustice and a loss to the state might occur. If there is a low bidder, an actual bona fide low bidder, on the sale of a car or that type of thing, I'd rather not have other than bid contracts in it. I agree with you, but I do want to get this into the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Aronow, I hate to get you back up again, but would you, please? Just one thing that really bothers me about that, when you say "any person interested in a contract". Do you know whether or not that would be interpreted to include me if I owned stock in a corporation and that corporation all of a sudden contracts with the state?

**DELEGATE ARONOW:** Well, if you were a minority stockholder, I don't think it would. Now, I did take the time—I have a new American Heritage Dictionary I got first of the year and we have it here in Helena at the motel and "interested", there are three definitions. Number one is casual—casual interest, which would not apply; and number two is possessing a right, claim or share; and three is desirous of personal gain, self-seeking. Now, if you're just a minority and not a controlling stockholder, I don't think that would interfere. If you were a controlling stockholder to an officer, sure. I mean, I think the court would look through the sham and say, who's the real person in interest?

**CHAIRMAN GRAYBILL:** Mr. Vermillion.

**DELEGATE VERMILLION:** Mr. Chairman, would a substitute motion for a new amendment be in order at this time?

**CHAIRMAN GRAYBILL:** Yes. Do you want this one that you sent up to be read as a substitute?

**DELEGATE VERMILLION:** Yes.

**CHAIRMAN GRAYBILL:** All right, the clerk may read Mr. Vermillion's substitute motion to Section 19, proposed.

**CLERK HANSON:** Okay. "I move to add as a substitute motion to the motion by Mr. Aronow to add a new section, the substitute motion to read as follows: 'A code of ethics for all state officials, officers, legislators and state employees prohibiting conflict between public duty and private interest shall be described by law.' Signed, Vermillion."

**DELEGATE VERMILLION:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Vermillion.

**DELEGATE VERMILLION:** I think Mr. Aronow has brought up a very important area here, the conflict of interest; but as you can see from the questions that have been raised tonight that it is a difficult area to deal with in a constitution. The amendment that I propose roughly corresponds to a section in the new North Dakota proposed Constitution. It also corresponds to a section in the Constitution of the State of Florida, which has apparently had a good deal of success. Because with this new section that I propose, which reads, "A code of ethics for all state officials, et cetera, shall be provided by law." In the State of Florida they have that in their Constitution and they have followed it up with a series of conflict of interest laws which have come to be known in some areas as "Sunshine Laws". Now, again, the area dealing with conflict of interest in the Constitution is difficult. The 1889 Constitution has several sections on it and I think perhaps this broad area in the proposed section might mandate the Legislature to have conflict of interest laws but that for us to spell them out here might prove to be a difficult task. But if we do mandate, we do ask the Legislature to have conflict of interest laws, as in the case of Florida, I think that the Legislature would see fit to follow up on this and give us some good, workable laws to take care of some of the problems that Mr. Aronow has pointed out, and some of the other delegates here have pointed out. Conflict of interest is an important area; it's a problem that has been developed and I think with this section that I propose, we would not find ourselves getting into an area of problem, but instead leave it up to the Legislature.

**CHAIRMAN GRAYBILL:** Mrs. Erdmann.

**DELEGATE ERDMANN:** I didn't understand whether the proposal by Bob Vermillion included units of local government, and I certainly agree that there's a great need to have them included with this code of ethics.

**CHAIRMAN GRAYBILL:** It says "all state officials, officers, legislators and state employees."

**DELEGATE ERDMANN:** I would like to have "local government units" included.

**CHAIRMAN GRAYBILL:** Mr. Vermillion?

**DELEGATE VERMILLION:** I would be agreeable to that.

**CHAIRMAN GRAYBILL:** Should we make it "all state and local officials"? Is that all right, Mr. Vermillion—"state and local officials, officers, legislators and state and local employees"? Now, does anyone have any objection to adding "local employees"?

(No response)

**CHAIRMAN GRAYBILL:** If not, it will be considered in Mr. Vermillion's amendment. Very well, the question is on Mr. Vermillion's proposed substitute amendment—"that a code of ethics for all state and local officials, officers, legislators, and state and local employees prohibiting conflict between public duty and private interest shall be described by law." So many as shall be in favor of that motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it and the proposed amendment is adopted. Since that was a substitute amendment, Mr. Aronow, yours is off unless you want to raise it again.

**DELEGATE ARONOW:** (Inaudible)

**CHAIRMAN GRAYBILL:** Are there other proposed additional amendments to the Constitution?

Mr. Furlong.

**DELEGATE FURLONG:** I wish to propose an amendment to Section 6 of the bicameral proposal. If the amendment is ultimately accepted, I presume it would actually involve Section 6 of the unicameral proposal as well. I don't have it written out, but it's only a couple of words. Would you be willing to accept it by voice?

**CHAIRMAN GRAYBILL:** Well, let's hear it.

**DELEGATE FURLONG:** On page 33—

**CHAIRMAN GRAYBILL:** Wait a minute. Is this a—it's an amendment to adopted Section 6?

**DELEGATE FURLONG:** That's right.

**CHAIRMAN GRAYBILL:** Then you'll have to do that by reconsideration, which you can do in a minute; but I'd like to take it in order, so I'll put it down here.

**DELEGATE FURLONG:** Thank you.

**CHAIRMAN GRAYBILL:** Now, Mr. Murray, the problem arises—we are now going to move to reconsideration and we can reconsider only once, as you know. We have two proposed motions to reconsider Section 4, one which changes the language the way it is and one which changes the sense, I trust we can take them up one at a time and still be within the reconsideration rule without considering it being done twice if we get a motion to reconsider for, is that correct?

**DELEGATE MURRAY:** Mr. Chairman, the motion to reconsider is to undo what has been done. If the motion prevails, then there must be another motion relative to whatever action is proposed.

**CHAIRMAN GRAYBILL:** All right, Mr. Joyce has a motion to reconsider Section 4 and Mrs. Bates also has a motion to reconsider Section 4. Mr. Joyce, do you want to make the motion?

**DELEGATE JOYCE:** Well, Mr. Chairman, in order to comply with the rules I'd prefer if Mr. Eskildsen made the motion, because I did not vote on the prevailing side.

**CHAIRMAN GRAYBILL:** All right. Very well, Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, having voted on the prevailing side, I move that the Committee of the Whole reconsider its actions taken on Section 4.

**CHAIRMAN GRAYBILL:** Very well. Mr. Joyce, do you care to discuss it? Now, I might point out that the first vote will be whether or not to reconsider it, and then we'll debate what to do with it if we pass the motion to reconsider.

**DELEGATE McNEIL:** Mr. Chairman, I rise to a point of order.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I believe that technically we have adopted Section 17, 18 and 19 at page 9 of the report which is just to the unicameral and I believe technically we ought to adopt these three sections to our bicameral before we proceed to another order of business.

**CHAIRMAN GRAYBILL:** Mr. McNeil, I believe your point is well taken. Do you want to so move?

**DELEGATE McNEIL:** I'll so move.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** You would not want to adopt Section 17 for the bicameral.

**CHAIRMAN GRAYBILL:** Right. May we make it just 18 and 19?

**DELEGATE McNEIL:** (No audible response)

**CHAIRMAN GRAYBILL:** Very well, Mr. McNeil's motion is to adopt Section 18 and 19 for the bicameral article. Section 17 applies to the referendum on unicameral and we wouldn't need that. So many as shall be in favor of Mr. McNeil's motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (No audible response)

**CHAIRMAN GRAYBILL:** The Ayes have it and it's done. Now, excuse me, we're back and Mr. Eskildsen, we'll consider your motion to reconsider Section 4 as having been made.

Mr. Joyce.

**DELEGATE JOYCE:** Well, all I can say is I'd very much appreciate if the assembly would vote to reconsider and give me an opportunity to make this proposed amendment. Is it proper for me to say what it is before we do reconsider it?

**CHAIRMAN GRAYBILL:** You can or you can't. There's one on both sides, so it doesn't make much difference.

**DELEGATE JOYCE:** Well, I'll say what it is then. In effect, I propose to amend the residency qualifications, striking Section 4 as adopted before and substitute in lieu thereof a proposal which would read: "A candidate for the legislature shall be a resident of the state for at least 1 year next preceding the election." That's exactly the same as it is. I would then substitute this new sentence: "For 6 months prior to the general election he must be a resident of the county which contains one or more districts, and where a district consists of more than one county, he must reside within that district."

**CHAIRMAN GRAYBILL:** Very well, you've heard the motion of Mr. Eskildsen. Is there further discussion?

(No response)

**CHAIRMAN GRAYBILL:** If not, all in favor of the motion to reconsider, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it and so ordered. Mr. Joyce, do you want the clerk to read your proposal again?

**DELEGATE JOYCE:** (Inaudible)

**CHAIRMAN GRAYBILL:** Very well.

**CLERK HANSON:** "Proposed amendment to Section 4 of the Legislative article on reconsideration: 'A candidate for the legislature shall be a resident of the state for at least 1 year next preceding the election. For 6 months prior to the general election he must be a resident of the county which contains one or more districts, and where a district contains of more than one county, he must reside within that district.' Signed, Joyce."

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, ladies and delegates, I don't have on my form the precise language that did pass as Section 4 after it was amended, and so I guess I'm breeding some confusion in that respect. Just how did the Section 4 pass the House before? Well, Mr. Chairman, maybe I can correct it this way.

**CHAIRMAN GRAYBILL:** I can read it for you. Section 4, as adopted, read: "Qualifications. A legislative candidate shall be a resident of the state for at least 1 year and a resident of the district from which he seeks election for at least 6 months preceding the general election." The phrase that was taken out is "a qualified voter". There's a phrase in there on line 20, "shall be a qualified voter". That was taken out.

**DELEGATE JOYCE:** Well, I would want it to continue to be out then. So I'm in order in that I propose to amend Section 4 by deleting the first sentence which reads, "a legislative candidate shall be a qualified voter." I would want to have that deleted, as it already has been deleted. Let me put it this way—let me take another try at it. I move to amend Section 4, as adopted by the Convention, to read as follows: "A candidate for the legislature shall be a resident of the state for at least 1 year next preceding the election. For 6 months prior to the general election he must be a resident of the county which contains one or more districts, and where a district consists of more than one county, he must reside within that district." Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce, that is the way we read it and that's the sense of your proposal.

**DELEGATE JOYCE:** Mr. Chairman, may I speak on it?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE JOYCE:** What I propose to do here—I lost very badly the other day, you know, when I was trying to take all residency in the districts out of the Constitution and so I accept that defeat. I thought all over the weekend all of the different arguments that I should've used and how I blew the job and how this assembly did not really mean to do what they did, but I'm not going into that. This is, admittedly, a compromise to satisfy, I think, everybody. Now, if each one of you delegates would mind taking a piece of paper and just draw a block on the paper, I'm going to talk first about rural Montana. And I'm going to assume, just for the purposes of illustrating what I'm talking about, that we're talking about that particular district that we now have that is represented by my distinguished seatmate and my fellow member of the Executive Committee that has five counties, as you recall. Now, on the way we've proceeded here, we assume further that those five counties on single member districts are going to be divided in half some way, so we're going to have two districts down there. My—under the proposal that I've—as written, you would have to live in one of those districts or the other for 6 months in order to run for the Legislature. You couldn't live in any other district and run for the Legislature, so that ought to satisfy the rural people. Now, the second situation is a situation that my colleague, Tom Ask, finds. He lives in Roundup, which is in Musselshell County and he's currently—is in a district that's got four or five counties but he's attached to the city of Billings, because they had to just make this one man, one vote, work. And so they've got a portion of the city of Billings that's in Mr. Ask's district as present. So when it's reapportioned on a one man, one vote single member district it will follow that it may very well happen that some rural county, maybe Musselshell County, will still be attached to that very same section of Billings. In that situation, then, a man who lives in the section of Billings that is not in Ask's district will not be able to run. He will have to live in that particular section of Billings that's within the district. So I should have—it seems to me the amendment then satisfies those rural people that do get tied up with the city people that they don't want to have anything to do with. So, if I satisfy those people, I pray you, can we not satisfy the city people once? And this doesn't just apply to Butte. It will apply to Billings, Great Falls, all the other cities of Montana, if you please. Now, in my proposal as drawn, where you are a resident of a county and it contains only one district—now, you see, in the cities when you go the single member district, you obviously are going to have to be just very arbitrary and go up one street and down the other and make up about 7,000 people, say. And that's all in the city, and you're going to exclude people who don't—you're going to have six districts, say, in my county, so all this proposal would do would be to permit a man who lives in one district to run in another district. Now, it seems to me—I'm not suggesting that the single member district won't vote for him; for example, let me illustrate it still further. I live out in the south side of Butte and every town is north and south and east and west, we all agree to that, and I'm just going to use myself as an example just to illustrate the point. But I want to tell you that I really don't ever intend to run for the Legislature. But, what if I did? I live on the south side of Butte and so I will be within a single member district and, of course, as the law—as the section passed here, I can run in that district providing I live there for 6 months. And all I want to do is have the option to take a chance and go up and run in a district on the north side and see if I can win. It seems to me that it ought to be my constitutional right as a politician to make a horse's tail out of myself and to go up there and lose. But, I ought to have the chance to go up and run, and the people up there ought to have a chance to vote for me. And, if they do vote for me, then presumably they want me to represent them in the Legislature, and who can quarrel with that? Isn't that democracy? That's the people's choice. They've chosen a boob, but you can't protect the people all the time. You've got to allow them some freedom of choice. So, on this situation, it seems to me that this will satisfy, it should satisfy, the single member district as it operates in the city because we're all in the city. Presumably we have interests that are common to the whole city and just because we happen to live on one side of the street or the other really doesn't separate us all that much like it does maybe out in the rural areas. Therefore, under the proposal, as long as all of the districts are within one county, anybody can run in any district even though he doesn't live there. And, of course, he won't be able to vote for himself, but then he has to spot his opponent that vote. But I think that those are the risks of the game. He ought to be able to get in there and work that much harder, being one vote behind, and it seems to me this is a reasonable proposal and I would very much like to see it incorporated into the Constitution in lieu of what the Committee of the Whole did the other day. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Bates, I know you have an amendment. I don't know whether it's helpful at this time or later. Do you want to make it now, or do you want to make it—?

**DELEGATE BATES:** At this time, yes, Mr. President. I would like to make a substitute motion. And in reconsidering this Section 4 on qualifications as we now have it, I would like to, on line 21 of page 3, put a period behind "year", add "a qualified voter and a resident of the district from which he seeks election for at least 6 months preceding the general election". Mr. President.

**CHAIRMAN GRAYBILL:** All right, Mrs. Bates, let me state that. As passed the other day, Section 4 said: "A legislative candidate shall be a resident of the state for at least 1 year, a resident of the district from which he seeks election for at least 6 months preceding the general election." The only change we made in the majority proposal there was to strike out on line 20 the words, "shall be a qualified voter". Now, Mrs. Bates' amendment will read: "A legislative candidate shall be a resident of the state for at least 1 year, a qualified voter—"

**DELEGATE BATES:** Period.

**CHAIRMAN GRAYBILL:** "—and a resident of the district from which he seeks election for at least 6 months preceding the general election." Is that correct?

**DELEGATE BATES:** That's right. I would like to have our candidate an elector in the district from which he runs. In noting the Constitution of North Dakota, I find that they, too, require this, as do most other states. Each person elected to the Legislative Assembly must be, on the day of his election, an elector in the district from which he is chosen, and I so move.

**CHAIRMAN GRAYBILL:** Very well, the debate then is on Mrs. Bates' substitute motion to add the qualified voter classification back into Section 4.

Mr. Habedank.

**DELEGATE HABEDANK:** You answered my question. She is putting "a qualified voter" back in?

**CHAIRMAN GRAYBILL:** She's putting it in in a different place than it came out of, though

**DELEGATE HABEDANK:** Yes, but we didn't have it before. It was stricken out completely, was it not?

**CHAIRMAN GRAYBILL:** It was stricken out in our debate the other day. It was in the—

**DELEGATE HABEDANK:** Mrs. Bates, will you yield to a question?

**DELEGATE BATES:** (Inaudible)

**DELEGATE HABEDANK:** Did you take into consideration the possible conflict with the section passed by the General Government proposal where if you were a qualified elector you might be eligible for office even though you were under penalty of a felony conviction? I think that was the reason that was taken out.

**DELEGATE BATES:** No, but I still think they should be a qualified elector and residents of the district. I think that other proposal was taken care of, the way I understand.

**DELEGATE HABEDANK:** Are you sure it was?

**DELEGATE BATES:** I think so. That they couldn't be a candidate.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** I don't have the other one before me, but I think we should check that quite carefully to make sure that we are not permitting a felon to run for this office.

**CHAIRMAN GRAYBILL:** Mr. Mason—or Mr. Melvin.

**DELEGATE MELVIN:** Mr. Chairman, would Mr. Habedank yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Habedank, will you yield?

**DELEGATE HABEDANK:** Yes, I will.

**DELEGATE MELVIN:** Mr. Habedank, if we leave out the qualified voter part, aren't we leaving it wide open for an alien or a noncitizen to run for the office unless we specify otherwise?

**DELEGATE HABEDANK:** I can't answer that, Mr. Melvin.

**DELEGATE MELVIN:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Melvin and Mr. Habedank, perhaps the Chair can help you. When we adopted the Suffrage and Election section of General Government, we adopted Section 4 which says: "Any person qualified to vote at a general election and for state officers of this state is eligible to any public office except as otherwise provided", and we amended that to exclude felons. So a felon is not eligible to any public office. I can't tell you exactly how we amended it to exclude felons but we did amend it to exclude felons. So a felon is not eligible to any public office, whether he's a qualified voter or not.

Mr. Habedank.

**DELEGATE HABEDANK:** That is the part that worried me, Mr. President. Thank—(Inaudible)

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, I do not rise either for or against the substitute amendment, but I would like to make a point of clarification. I'm in sympathy with Mr. Joyce's intent, but the illustration that he used between Districts 7 and 8, or between 8 and 9, district in which Mr. Ask is in is not a part of the city of Billings. It's a rural area in Yellowstone County. I'd just like to make that clear. It is not a part; I can see how it might be, but the illustration was invalid.

**CHAIRMAN GRAYBILL:** Mr. Joyce, I'll let you respond to that, but it isn't germane to Mrs. Bates' substitute amendment.

**DELEGATE JOYCE:** Well, may I have the floor then to speak against Mrs. Bates' amendment?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE JOYCE:** I really don't like to do this, but Mrs. Bates and I just have a different philosophy about how important residency is and, of course, if she wins in the Convention, I lose. And I might say then, parenthetically, and just slightly off the subject of Mrs. Bates' motion, I didn't realize whether it was a rural area or the city of Billings. The point was the same. If you get tied up where there is a portion of what might be a city or another county, where two counties are involved, then you must live in the district. If you want to run in a district that does cut across two counties, then you must actually live right there in the district. That ought to satisfy those people, I think; but where there's the district and the county and the district within the county, each district is absolutely within the county, then I just want the option to be able to run from another district. I'm not going to say another word except I'll try to clear up if I've confused anybody. I think the language does say that, if—you don't have it before you, of course, but it says that for 6 months prior to the general election. So, you have to live 6 months —that's the key word—6—not 5, nor 8, nor 10½, but 6. He must be a resident of the county which contains more than one district. That would take care of the city, and where the district consists of more than one county, then he must live in the district.

**CHAIRMAN GRAYBILL:** Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. Chairman, I rise to support Mrs. Bates' amendment. It seems to me that if you believe in the single district theory, then you are trying to pinpoint responsibility, and I dislike the idea of the people in the rural part of our county having to run within their single district and yet in the County of Cascade, we would be allowing all of the city candidates to run at large which I certainly oppose. It is unfair to the people in Black Eagle and Cascade and Belt. And maybe I misunderstand Mr. Joyce's motion, but I believe he's saying that the candidates within a city like Great Falls would be running at large. Is this correct?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** It is not. That is—

**DELEGATE ERDMANN:** All right.

**DELEGATE JOYCE:** —absolutely incorrect. You would not run at large. You would have to run within the district. So, if you lived in Great Falls and Black Eagle is in a given district, and Black Eagle is in Cascade County, and that particular district isn't in any other county, all I say is that the people of Black Eagle have the right to vote for whoever is running from that district; but they could vote for Mrs. Erdmann, who doesn't live there, if she wants to go down and file there. And I can't see how you're picking on the people of Black Eagle—they have the right to vote and they don't have to vote for you, but on the other hand, they have the right to vote for you if they want to, and why should you arbitrarily deny them the right to vote for you? You may be the absolutely—the best representative they could send to the state Legislature in the history of Montana, and I'm inclined to think that you would.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. President, I rise in opposition to the amendment offered by Mrs. Bates and in support of the amendment offered by Mr. Joyce. I would like to point out that while North Dakota in their proposed Constitution did retain a residency requirement, they did not go for single member districts, and also at the same time their residency requirement in the district is limited to 1 day. That is, they must only be a resident on the day in which they are elected.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I want to have some information. I don't have the General Government books before me, but if my recollection serves me correctly, when we passed Section 3, I believe it was, concerning the qualifications of a voter, we permitted a person who is still under supervision while on parole, probation, to be a qualified voter. Yes, we did.

**CHAIRMAN GRAYBILL:** Now, Mr. Romney, you're correct that the person on probation can be a qualified voter but we amended it out of Section 4 which says that he's eligible to hold office. He may be a qualified voter but he is not eligible to hold office.

**DELEGATE ROMNEY:** That's what I was going to say and in lieu thereof, we placed language to the effect that the residency would be as provided by law in Section 4. Right?

**CHAIRMAN GRAYBILL:** No. "Section 3. The legislature shall provide by law the requirements for residency, registration, absentee ballots, voting and administration of elections."

**DELEGATE ROMNEY:** But there's nothing in Section 4 as we adopted it concerning a qualified voter.

**CHAIRMAN GRAYBILL:** Section 4 says: "Any person qualified to vote at the general election and for state officers is eligible for any public office, except", it goes on to exclude felons.

**DELEGATE ROMNEY:** Right. And that's why I don't see how the amendment by Delegate Bates could prevail in this case because it says "qualified voter". Right?

**CHAIRMAN GRAYBILL:** I'm sorry, Mr. Romney, I didn't hear the last, if you're asking me.

**DELEGATE ROMNEY:** I don't see how the amendment of Delegate Bates can prevail, how we can accept it, when it provides that a qualified voter can take part in this election.

**CHAIRMAN GRAYBILL:** Mrs. Bates' amendment, Mr. Romney, merely would make a qualified voter one of the tests for a legislative candidate, but it would also, of course, not mean that a qualified voter felon could be, because the other one provides that the felon can't be.

**DELEGATE ROMNEY:** (Inaudible)...as a substitute, why, the felon would be allowed to if it's a qualified voter. It follows that if you have the definition in one place when you use it in the next section, that it would be included, and there's no stipulation taking it out.

**CHAIRMAN GRAYBILL:** Mr. Brown.

**DELEGATE BROWN:** Mr. President, I wonder if we could avoid all of this confusion by having Mrs. Bates amend her amendment to leave the section as is and add the separate sentence, "He shall also be registered to vote in the district from which he runs." I'm not speaking for this amendment. I'm trying to clarify it.

**CHAIRMAN GRAYBILL:** Well, the way Mrs. Bates' amendment now reads, Mr. Brown, he does at the moment have to be a resident of the district in which he runs. Her question—her point is that she added the qualification of a qualified voter. Now, we've already said in the General Government thing that a qualified voter can't hold office if he's also a felon, so I don't agree with Mr. Romney. I think the class is mutually exclusive but Mr. Romney doesn't agree with me. Very well, are you ready to vote on Mrs. Bates' motion which would add to subsection 4, "A legislative candidate shall be a resident of the state for at least 1 year", and then she adds, "a qualified voter and a resident of the district from which he seeks election for at least 6 months preceding the general election."

Mr. Ask.

**DELEGATE ASK:** Just a few words. I rise in opposition to Mrs. Bates' motion and would support Mr. Joyce's. I voted the other way the other day but in reviewing this, when the districts are all in one county, I can see the problems; and I can see nothing wrong in allowing them, as long as they live in the county, to be allowed to run in any district in that particular county. So I would therefore support Mr. Joyce's motion.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, I am like Mr. Ask. I've had a number of second thoughts about this whole thing and I speak from a background in Yellowstone County, being very active in Democratic politics in that county, and through the years going out urging people to get on the Democratic ticket to run for the state Legislature. And if we adopt Mrs. Bates' substitute motion or leave it the way it was, it automatically, as far as I can see, we're going to knock out—and

I'm speaking from my party's position, now—we will knock out some of the best Democratic candidates we have in Yellowstone County, because there are people who live—and I mentioned this in my speech the other day—on Poly Drive who could never win in that district. I'm speaking of Democratic candidates. If we have the single member districts they'll have to file in Democratic districts in Yellowstone County if they hope to win. There's one other thing that's going to come out of this if we adopt this plan. I think that we'll probably have a number of districts—and, again, I'm confining this to Yellowstone County—where you will probably not have opposition to the candidates in the general election because there are some areas in Yellowstone County that are so heavily Republican that Democrats will not file, and there are some areas that are so heavily Democrat that the Republicans won't file. So, we'll have that as a new factor in Montana politics. I think that same thing would be true in Silver Bow County. But, I do believe with Mr. Joyce that if a well-qualified candidate files in another district other than the one in which he lives, and he can convince the people that he should be elected to the state Legislature, then that's good enough.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** (No response)

**CHAIRMAN GRAYBILL:** Oh, excuse me—Mr. Kamhoot. I got across the aisle from you there. Excuse me.

**DELEGATE KAMHOOT:** Mr. Chairman, I was one of those that opposed my seatmate the other day. I was one of those that won so, of course, I had a lot of fun out of it. Now, I don't really care too much whether Delegate Blaylock's party is strong in one place or another either. But, my seatmate didn't bribe me; but he has a very reasonable solution here and it appears to me that this would certainly clear up just about everyone's problem if they will just examine it and understand what he's doing. And it certainly clears it up for me and I'm very happy to support my seatmate, here, Delegate Joyce. I like Mrs. Bates' proposal, too, but I think this is probably a more reasonable one that will suit everybody's needs. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman, I wondered if Delegate Joyce would clarify a situation in District 11?

**CHAIRMAN GRAYBILL:** Delegate Joyce, do you know anything about District 11?

**DELEGATE JOYCE:** I'll try. Now, as my proposal reads, and if we assume for example that Park County gets tied up with the east end of Bozeman, for example—the last 20 blocks, say, or the last 10 blocks. Then, under my proposal, in order to run in that district in Park County, which may be District Number 11, the candidate would—if he's from Bozeman, Gallatin County, he would have to live in that section of Gallatin County that comprises the district. If he lived up in the other end of town he would not be able to run. But then, as far as Bozeman is concerned, if they had four other districts that were altogether within Gallatin County, then you wouldn't have to live in the district. You could run wherever you wanted to and the people would still have the right to vote.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I assume we're on Mrs. Bates' amendment and if that's what we're on, I must agree with the gentleman from Ravalli on adding this thing back in about being a qualified voter. I think we will have created a constitutional problem where this section may supersede the one we passed the other day. I may not be right on it, but I don't think it's worth taking a chance on.

**CHAIRMAN GRAYBILL:** Mr. Wilson, I think you were up.

**DELEGATE WILSON:** Mr. Chairman, I rise in support of Mr. Joyce's motion. I am one of the candidates from a five-county area and I see no problems as long as we're going to have to file in the district; and I do see where it will alleviate some of the problems in the towns and the gerrymandering that you may have in setting up districts within a large town. And it does qualify people to be able to file as long as they're living within the county and in the district. Therefore, I support Mr. Joyce's motion.

**CHAIRMAN GRAYBILL:** Mrs. Bates, do you want to close? Oh, Mr. Siderius, you want to talk?

**DELEGATE SIDERIUS:** Mr. Chairman, I support Mr. Joyce's amendment. All it does, is gives the candidates in the county their choice of the district they wish to run in.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I still believe that the candidate should live in the district and be a resident of that district if it would clarify the registered voter and say he shall also be registered to vote in the district from which he runs, rather than saying qualified voter. In regards to Mr. Joyce's plan, the District 11 there's overlapping into two counties and the way I read it, anyone from Gallatin can go into Park and run in that area even though they are single member districts. Today we defeated a two-representative, one-senatorial district which would've given a little more flexibility; but if we're going to go into the single district, this is what I believe, then, we should have candidates from that single district. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the question is on Mrs. Bates' amendment. Section 4 would read, under her amendment: "A legislative candidate shall be a resident of the state for at least 1 year, a qualified voter, and a resident of the district from which he seeks election for at least 6 months preceding the general election." So many as shall be in favor of Mrs. Bates' proposed amendment—substitute amendment—say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and so ordered. Now the issue is on Mr. Joyce's amendment, or Mr. Joyce's proposal for Section 4, the text of which is: "A candidate for the legislature shall be a resident of the state for at least 1 year next preceding the election; for 6 months prior to the general election he must be a resident of the county which contains one or more districts; and where a district consists of more than one county, he must reside within that district." All those in favor of Mr.—

**DELEGATE CHAMPOUX:** Roll call please.

**CHAIRMAN GRAYBILL:** All right, Mr. Champoux called for a roll call; I have enough seconds. So many as shall favor—

**DELEGATE MAHONEY:** (Inaudible)... Mr. Chairman, I've got the floor. I want to know a few things here. One of these is—

**CHAIRMAN GRAYBILL:** Well, wait until I give it to you, Mr. Mahoney. Will you please give Mr. Mahoney the floor?

**DELEGATE MAHONEY:** One of these things I want to know, if a guy can be a foreigner and be elected to Legislature? If you're going to have no qualifications except what you've got in here, he can be a citizen of Canada and be in this Legislature. I think we'd better get down here and see that he's (Inaudible)...to this—and I don't care what you do in the other sections, this is what you've said in the Legislative section. Let's get some qualifications in here that he's at least got to be a citizen of the State of Montana and be a citizen of the United States.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** I have no objection to that but the committee didn't do it. I presumed it would be done somewhere else. All I was addressing myself to was the section as it did apply, but if you want to add another sentence on afterwards, if we see if my motion passes, with reference to citizenship, I'll be glad to so move or you can so move.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** I think, Mr. Mahoney, under the Suffrage and Election thing, to be a voter you have to be a citizen, 18 years of age, and meet the registration and residence requirements as provided by law; and that no person serving a sentence for a felony in a penal institution or who is adjudged of unsound mind. Then, next, to hold any public office—this applies to each and every office in the state, as I understand it, so we don't have to spell it out with each office—the second thing is, any person—now this is an officeholder —be qualified to vote for state offices at general elections is eligible to a public office except as otherwise provided in this Constitution, subject only to additional qualifications provided by Legislature. Provided however, that no person convicted of a felony shall be qualified to hold office except upon his final discharge from state supervision. I think this particular point—I can appreciate everyone's concern—but I think our Election and Suffrage governs each and every office. And the reason we eliminated, on the first go-around on this, to be a qualified voter of that section, if I understood it correctly, was that for any state office you have to have the qualifications of being a voter and the additional qualifications. Do you follow me on that? In other words, I think these are the basic qualifications that you have to have for any office in addition to such other qualifications as may be provided.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** I might state that on your section, if anybody picked it up and he's been very close and it says, this is the qualifications to be a legislator, and I agree with Mr. Schiltz down here when he was even questioning it just a little while ago—would this supersede? Now, you're doing specifically and saying a legislator has certain things right here and I think you've got to have it in here that at least he's got to be a citizen or something and including—because you made specific reference to that. That's my answer to it.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** The only thing I think we should—thing—would we have to go through the Constitution though and spell out that basic requirement on each office as we come to it. It seemed like in the Election and Suffrage in our old Constitution, as well as this one, that covered all officers in our state, so that that was a basic requirement before anyone could hold any state office. I'm not arguing the point; I'm just trying to clarify it if I could be helpful.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President, I would attempt to clarify this by an amendment. I move as a substitute to Mr. Joyce's amendment the following words: "A candidate for the legislature shall"—this is the amendment—"be a legal voter qualified to hold public office, a resident of the state for at least 1 year", and then it reads as it does. It will read: "A candidate for the legislature shall be a legal voter, qualified to hold public office, a resident of the state" and then go on.

**CHAIRMAN GRAYBILL:** Now, Mr. Habedank, the Chair will accept your amendment; but the Chair would like to point out that in Section 4 of the article on Suffrage, we said that only qualified voters could hold office and we defined qualified voters as citizens of the United States who are 18 years of age and older, so it's all covered. But if you want to cover it again, okay.

**DELEGATE HABEDANK:** I am aware of what the Chair has pointed out but when two people like Mr. Schiltz and Mr. Mahoney and another like Mr. Romney can argue about it, I think it's possible someone else can. And if one way is certain and the other is uncertain, I'd rather take the certain way.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I must disagree with Mr. Habedank. We've defined this in Number 4, or Sections 2, 3 and 4 of the General Government Proposal Number 1. Now, if in that proposal we say, "unless otherwise provided in this Constitution"—if we have to go through every section of this Constitution on every officer, then we're going to have to do this. We're going to have to say a qualified voter is a citizen, a citizen can be a candidate or a qualified voter. We must do it all over again. It's been done once. That's enough. Just so long as we don't start tampering with it, as Mrs. Bates did, because then you have another provision in the Constitution that starts to define and it refers back to what we were talking about in Suffrage. Just don't tamper with it. We've got candidate defined, who may be a candidate, let's leave it alone. We start fooling with it, then we start to get in trouble.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman, I would like to clear this up with Delegate Schiltz. My motion was to make a qualified elector in the district in which he was running and not just a qualified voter of the State of Montana. Thank you.

**DELEGATE ROEDER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Roeder.

**DELEGATE ROEDER:** I move we adjourn. This is goofy, to use one of Mr. Joyce's favorite words. I will have been here, by the time I get home, I will have left the home 13 hours ago this morning. I'm tired. We're going to have a long day tomorrow.

**CHAIRMAN GRAYBILL:** Mr. Roeder, your motion will be in order, but the Chair will announce that the Chair is sorry that you made it without letting the floor leader make it. And the Chair will take this opportunity to say that he resists it. The Chair is just as tired as you, and we're trying to get through these and we have a motion that we've been discussing, so I trust—I hope, at least, that the body will not sustain your motion. However, I'll put it. All those in favor of adjourning, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it. Now we're back on Mr. Habedank's amendment. Very well, all those in favor of Mr. Habedank's amendment which adds the words, "shall be a legal voter qualified to hold office", into the proposed Section 4, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and Mr. Habedank's motion fails. Now, we're back on Mr. Joyce's proposal for Section 4 of Article V of the Legislative Article. All those—all right, we want a roll call vote on that. The vote is open and all those in favor of Mr. Joyce's proposal which is—all right, excuse me—

Mr. Burkhardt.

**DELEGATE BURKHARDT:** I realize the pressure that you are under as Chairman. I rise because I feel I am being coerced at this point. I have no copy of this motion in front of me. I have not drawn my little block of continuous lines—contiguous lines. I'm not sure I fully understand the sense of the motion. I have a feeling that we are moving hastily on something that a night's consideration might be valuable to have. I know your problem, I know we just had this motion to adjourn. But I would like to give our floor leader a chance to use his good judgment. And think maybe it's time to adjourn, too.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt, please understand, I want you to understand it, too, and so I'll state the motion very clearly for you.

**DELEGATE BURKHARDT:** (Inaudible)...Mr. Joyce please come to the blackboard and draw his contiguous lines so that I can see them, or yield to a question and perhaps give us an illustration of this?

**CHAIRMAN GRAYBILL:** Mr. Joyce, will you draw him a picture?

(Delegate Joyce approached the blackboard.)

**DELEGATE JOYCE:** Mr. President, can I erase this now?

**CHAIRMAN GRAYBILL:** Certainly.

**DELEGATE JOYCE:** Mr. Chairman, would you turn on—Mr. Chairman—

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** (No response)

**CHAIRMAN GRAYBILL:** Very well, Mr. Joyce has the floor.

**DELEGATE JOYCE:** Illustration Number 1. (Drawing on blackboard) This is a rural area, now. It's divided into—there are 3 counties and there is only 2 districts, right? You have to live within the district, under my proposal, to run. You get out here, (illustrating) you've got a portion of the city attached to a rural area, but it's all one single member district. If you live in the city out here, (illustrating) out of the district, you cannot run. You must live within the district. In the city that's all within 1 county you've got 5 separate single member districts. If you live in this district (illustrating) you can still file over here. (illustrating) If you live in this district (illustrating) you can file over here. (illustrating) Any questions?

**DELEGATE BURKHARDT:** Would you please read the language of your motion then, and point to it as you're reading it?

**CHAIRMAN GRAYBILL:** Mr. Burkhardt, I'll read the language for you: "A candidate for the legislature shall be a resident of the state for at least 1 year preceding the election." That's practically identical to the old one. Now, "For 6 months prior to the general election, he must be a resident of the county which contains 1 or more districts and where a district consists of more than 1 county, he must reside within the district." "For 6 months prior to the general election he must be a resident of the county which contains 1 or more districts, and where a district consists of more than 1 county, he must reside within that district."

Mr. Burkhardt.

**DELEGATE BURKHARDT:** I'm sorry that I'm just not able to take it in at this hour of the night, Mr. Chairman, and I'll have to vote in the dark. I'm sorry.

**CHAIRMAN GRAYBILL:** Mrs. Blend.

**DELEGATE BLEND:** Mr. Chairman, I would like to ask Mr. Joyce a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce, would you yield?

**DELEGATE JOYCE:** (Inaudible) (Laughter)

**DELEGATE BLEND:** Mr. Joyce, would I gather from your diagrams, then, that one could file to vote in the district in which they lived and in another district—

**DELEGATE JOYCE:** Nope.

**DELEGATE BLEND:** —or all the districts if he paid the filing fee?

**DELEGATE JOYCE:** No, absolutely not. You can only file once. You could only run for office once, that's in one district.

**DELEGATE BLEND:** Even though he was registered and lived in one district, if he filed in another?

**DELEGATE JOYCE:** Yes. Under my system, you'd be registered where you live and you'd have to vote where you live, but you could run where you don't live. But you couldn't run several times. It's very similar to the United States Constitution. I can, right now, I live in Silver Bow County, I'm registered to vote there, I have to vote there, but under the United States Constitution I can go over to the eastern district and file against John Melcher for Congress next time if I want to be a fool. (Laughter)

**DELEGATE BLEND:** Thank you. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Joyce's amendment to Section 5. His proposed amendment says: "A candidate for the legislature shall be a resident of the state for at least 1 year next preceding the election. For 6 months prior to the general election he must be a resident of the county which contains 1 or more districts, and where a district consists of more than 1 county he must reside within that district." We'll take a roll call vote. So many as shall be in favor of that Section 4, please indicate by voting Aye. So many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Will you please tally the vote? Mr. Studer, do you wish to explain your vote?

**DELEGATE STUDER:** How to get a vote in? (Laughter)

**CHAIRMAN GRAYBILL:** How do you wish to vote?

**DELEGATE STUDER:** (Inaudible)...button was on for a while, then went off.

**CHAIRMAN GRAYBILL:** How do you wish to vote, Mr. Studer?

**DELEGATE STUDER:** Green. (Laughter)

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Absent |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Absent |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Absent |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Aye |

| | |
|---|---|
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Absent |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Chairman Graybill | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Absent |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Absent |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Absent |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 74 delegates voting Aye, 18 voting No.

**CHAIRMAN GRAYBILL:** Do you have Mr. Studer voting Aye.

**CLERK HANSON:** Yes, I do.

**CHAIRMAN GRAYBILL:** Mr. Studer, you're registered as voting Aye. 74 delegates having voted Aye and 18 voting No, the proposed amendment to Section 4 passes. Now, ladies and gentlemen, the hour is late and I'm sorry to have kept you here this long, and I want to assure Mr. Burkhardt that my purpose is not to have him vote if he doesn't understand, but on the other hand, we haven't yet finished the Legislative article. We still have Section 16 to reconsider and Section 6 to reconsider. However, I don't believe we should try to do that tonight, but I would simply call to everyone's attention how difficult it is to work after you've worked as long as we've worked today. So perhaps tomorrow morning we'll be able to make more progress on the Legislative article and get on to the Executive article. Mr. Eskildsen, do you have a motion?

**DELEGATE ESKILDSEN:** Mr. Chairman, I move the Committee of the Whole rise and report progress and beg leave to sit again.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen has moved that this committee rise and report progress and beg leave to sit again tomorrow morning. All in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (Inaudible)

**CHAIRMAN GRAYBILL:** That motion carries. We're not adjourned. Convention will be in order. Will the clerk please read the title of the committee report?

**CLERK HANSON:** "February 23, 1972. Mr. President, we, your Committee of the Whole, having had under consideration Report Number 3 of the Committee on Legislation, recommend as follows: 'That the Committee rise and report progress and beg leave to sit again.'"

**PRESIDENT GRAYBILL:** I would beg— Mr. Eskildsen, will you please make a motion to adopt the report without reading it?

**DELEGATE ESKILDSEN:** I so move.

**PRESIDENT GRAYBILL:** We're moving, then, that this report be adopted without the necessity of reading the several pages that it consists of since we're going to rise and report again. All in favor of the motion, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**PRESIDENT GRAYBILL:** The Ayes have it. Mr. Eskildsen, before you adjourn, are there announcements?
Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, with great reluctance I announce a meeting of the Style and Drafting Committee tomorrow morning at 8 o'clock.

**PRESIDENT GRAYBILL:** Are there other announcements?
(No response)

**PRESIDENT GRAYBILL:** Very well, Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President, I move we adjourn until Thursday, February the 24th, 9:00 a.m., 1972.

**PRESIDENT GRAYBILL:** The motion is that we adjourn until 9:00 a.m., tomorrow morning. All in favor say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**PRESIDENT GRAYBILL:** Thank you very much. The motion carries.

(Convention adjourned at 10:47 p.m.)

**February 24, 1972**
**9:10 a.m.**
**Thirty-First Day**
**Convention Hall**
**Helena, Montana**

**PRESIDENT GRAYBILL:** Convention will be in order. If you'll all rise, we have a visiting minister this morning, Franklin Elliott from the Mayflower Congregational Church, who will give us the invocation.

**REVEREND ELLIOTT:** Eternal Creator, God of our Fathers in the infinitely far off, ancient beginnings. God of our sons and daughters and even their unimaginable future. You are also God of our here and now. We pause here at the beginning of this day to remember that you are present in this here and now. You have made this a holy time and a sacred place. Not all times are the same. Your creativity, O, God, has invaded these days so that they may become more than here and now. They encompass the heritage of our ancestors and the destiny of our childrens' childrens' children. This is a time when the iron is hot, hammering it between the anvil of circumstance and the sledge of our will. We can shape it into the form of our vision and then the time of tempering comes and the season of creativity has passed. That we pause in the midst of this season to remember that this is a holy time. Not all places are the same. Your judgment, O, God, has invaded this place. By the decisions we make, we disclose the values we serve, the interest to which we are loyal. We are always being judged by the way we make up our minds. Our decisions reveal whether we worship You and Your eternal creativity or the static idols of our own sculpturing. This is a place of decision so we pause here to remember that this is a sacred place. In this sacred place at this holy time, we do not, O, God, ask for anything. We know what we must do for ourselves. Instead, we make an offering of our deep concerns, our imaginative thoughts, our productive conflicts and our expansive hopes. God of our Fathers, God of our childrens' children, be to us likewise, the God of our here and now, Amen.

**PRESIDENT GRAYBILL:** I should've announced and I will announce now that Reverend Elliott is the guest of Mr. Scanlin and I trust Mr. Scanlin will tell Reverend Elliott that last night—Reverend Elliott's from Poly Drive in Billings. Last night, we made it possible for you to run for the Legislature from Laurel. (Laughter) We'll take attendance this morning by voting Aye on the voting machines.

**CLERK HANSON:** Mr. President, may Delegates Arness, Blaylock, Campbell and Erdmann be excused, please? Mr. Blaylock is here.

**PRESIDENT GRAYBILL:** Very well.

**CLERK HANSON:** Delegate Oscar Anderson, Delegate Babcock, Delegate Pemberton, Delegate Anderson, Oscar.

**PRESIDENT GRAYBILL:** Very well.

| | |
|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Excused |
| Aronow | Present |
| Artz | Present |
| Ask | Present |
| Babcock | Present |
| Barnard | Present |
| Bates | Present |
| Belcher | Present |
| Berg | Present |
| Berthelson | Present |
| Blaylock | Present |
| Blend | Present |
| Bowman | Present |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Excused |
| Cate | Present |
| Champoux | Present |
| Choate | Present |
| Conover | Present |
| Cross | Present |
| Dahood | Present |
| Davis | Present |
| Delaney | Present |
| Driscoll | Present |
| Drum | Present |
| Eck | Present |
| Erdmann | Excused |
| Eskildsen | Present |
| Etchart | Present |
| Felt | Present |
| Foster | Present |
| Furlong | Present |
| Garlington | Present |
| Graybill | Present |
| Gysler | Present |

| | |
|---|---|
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Present |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| Harrington | Present |
| Heliker | Present |
| Holland | Present |
| Jacobsen | Present |
| James | Present |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Present |
| Leuthold | Present |
| Loendorf | Present |
| Lorello | Present |
| Mahoney | Present |
| Mansfield | Present |
| Martin | Present |
| McCarvel | Present |
| McDonough | Present |
| McKeon | Present |
| McNeil | Present |
| Melvin | Present |
| Monroe | Present |
| Murray | Present |
| Noble | Present |
| Nutting | Present |
| Payne | Present |
| Pemberton | Present |
| Rebal | Present |
| Reichert | Present |
| Robinson | Present |
| Roeder | Present |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Present |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Present |
| Swanberg | Present |
| Toole | Present |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Present |
| Ward | Present |
| Warden | Present |
| Wilson | Present |
| Woodmansey | Present |

**CLERK HANSON:** Mr. President, 96 delegates present, 3 excused, 1 absent.

**PRESIDENT GRAYBILL:** The journal may so show. Order of Business Number 1, Reports of Standing Committees. Chair will recognize Mr. Etchart.

**DELEGATE ETCHART:** Mr. President. We, the Committee on General Government, respectfully report as follows: that the General Government Committee Proposal on general government is ready to be duplicated and submitted to the Committee of the Whole for consideration. I move the adoption of the committee report.

**PRESIDENT GRAYBILL:** We don't need to adopt the report. It will be considered filed and it has been sent to printing and will be placed upon your desks, and I hereby put it on General Orders. Will the clerk read the report of the Style and Drafting Committee? Do you have it?

**CLERK HANSON:** "Montana Constitutional Convention, Committee on Style Drafting, Transition and Submission to the Montana Constitutional Convention; subject: Suffrage and Elections. Ladies and Gentlemen: The Committee on Style, Drafting, Transition and Submission, transmits revisions of the above article for consideration of the Convention. Immediately following this letter, you will find the above article as revised by the committee including by underlining, words we have added, and by crossing out, words we have deleted from the article as approved. Finally, there is an explanation on—of the changes we have made. Sincerely yours, John M. Schiltz, Chairman of the Committee on Style, Drafting, Transition, Submission. William A. Burkhardt, Vice-chairman."

**PRESIDENT GRAYBILL:** The Committee on Style and Drafting's Suffrage and Elections report will be referred to General Orders. All right, I think that's all the Standing Committee Reports. Number 2, Reports of Select Committees?

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** None. Number 3, Communications?

**CLERK HANSON:** "Helena, Montana, February 23, 1972, Honorable Leo Graybill, Jr., President, Montana Constitutional Convention, Capitol, Helena, Montana. Dear Mr. President: In accordance with the provisions of Section 15 (2) Extraordinary Senate Bill Number 6, Chapter Extraordinary Number 1, Laws of Montana 1971, the license of A.W. Schribner, license number 44-72 has been reinstated as of February 23, 1972. Sincerely yours, Frank Murray, Secretary of State."

**PRESIDENT GRAYBILL:** Are there any other communications? Order of Business Number 4, Introduction and Reference of Delegate Proposals?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 5, Final Consideration?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 6, Adoption of Proposed Constitutional Proposals?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 7, Motions and Resolutions? The Chair will recognize Mrs. Mansfield.

**DELEGATE MANSFIELD:** Mr. President. I move the Convention send a letter to President James Short of the Western Montana College, as they celebrated their 79th anniversary February 23, 1893. Montana's third Legislative Assembly made into law establishing the State Normal School at Dillon. This came about through the United States Enabling Act approved by Congress in 1881. Seventy-two sections of public domain for Dillon and the other three schools were established. In 1893, the Legislature neglected to provide appropriations for the Normal School at Dillon. The oversight was not remedied until 1895 and it was completed and furnished in 1896 for $50,000 for the administration building and its furnishings. It was established for the instruction and teacher training of all teachers in the public schools of the state inclusive of all grades and departments. It first had a 1-year and 2-year certificate, later established Bachelors and Masters Degrees. In the first year, it was changed to the name of State Normal School, later State Normal College, later Western Normal College of Education and Western Montana College. Our delegate, Carl Davis of Dillon, is presently a director at this school at this time. Thank you.

**PRESIDENT GRAYBILL:** You've heard the motion of Mrs. Mansfield. All in favor of sending a letter of congratulations to Western College, please say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** The Ayes have it. Mrs. Mansfield, if you'll get that letter to us, we'll see that it's properly transmitted. Are there other Motions and Resolutions?

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** Unfinished Business?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Special Orders of the Day?

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 10, General Orders of the Day.
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

**PRESIDENT GRAYBILL:** The motion of Mr. Eskildsen is to move the Convention into Committee of the Whole. So many as are in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** The Ayes have it and so ordered.

**CLERK HANSON:** "The following committee proposals are now on General Orders as of February 24, 1972: Legislative, Executive, Judicial, Natural Resources, Revenue and Finance, Bill of Rights, Public Health, Education, Local Government, General Government. The Natural Resources Committee Proposal Number 6 having been duplicated and placed on the delegates' desks on the 22nd day of February, 1972 at 9 o'clock a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules."

(Committee of the Whole chairmanship assumed by Mr. Graybill).

**CHAIRMAN GRAYBILL:** Very well. We have before us this morning, ladies and gentlemen, two motions to reconsider. The first one concerns Section 6 of both the bicameral and unicameral articles. Mr. Furlong, the Chair will recognize you to explain your motion, and then we'll vote on the motion to reconsider, and if we reconsider, we'll vote on your proposal.

**DELEGATE FURLONG:** Thank you, Mr. Chairman. If I understand you correctly, you want me to explain the reason for reconsidering first and I'd prefer to do that.

**CHAIRMAN GRAYBILL:** Well, you—you can do it either way but the body might like to know what it is, yes.

**DELEGATE FURLONG:** My concern—I would refer you to the Legislative Article V, Section 6 on page 33, although it appears in several other places in the article and I suspect that if the committee sustains my motion, that it would apply to the unicameral as well as to the bicameral proposal. I am concerned that on line 9, page 33, it reads as follows: "The legislature shall meet at least once a year in regular sessions of 90 legislative days or less." I came here firmly convinced that the Legislature had to have more time to do the business of the state and I haven't changed my opinion on that. But I feel that we have, in fact, given them a blank check by using the term, "90 legislative days or less." Actually, it multiplies the present amount of time by some factor of 3½ or 4 times or more. My proposal, if you sustain it, would be to change the number, "90", in line 9 back to, "60 legislative days or less." This, in fact, would more than double the amount of time that is now allowed. Besides that, if the Constitution is adopted, we will have allowed the Legislature to extend that at any time by a simple majority vote of the Legislature. Now, I am not trying to cut the amount of time. I want them to have all the time that is needed, but I am trying to change the procedure. I believe that if they need more than double the amount of time that they now have, it would be very easy for them under our proposal, to submit to the people the need, and to make a simple minority vote and have it. I think that actually the 3½ to 4 times is multiplied by the fact that if we go to the annual session, we will have eliminated much of the fuss and confusion over the old biennial session so that the 60 days, in itself, could be much better put to use than it now is. So I don't want to spend all your time and make you go into a night session. I do believe, however, that changing the "90" to "60" days, does not take away any of the rights the Legislature has to the length of term. It does change the procedure. It does give them a deadline that they'll have to work against. It also gives them an easy method of extending the Legislature by the majority vote. And if you sustain my motion to reconsider, I will move to change it from "90" to "60". Thank you.

**CHAIRMAN GRAYBILL:** Very well. The debate is on Mr. Furlong's motion to reconsider. Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman. I rise in support of the motion to reconsider. I had wanted to ask that this section be reconsidered on the bicameral side, and if it is reconsidered, I would attempt to make the motion to reconsider the minority report for the bicameral side. Now, I don't claim to be an expert or even very knowledgeable about a unicameral Legislature. I have heard a great many words about it such as visibility, accountability, and efficiency, economy, and so forth, but after 5 weeks of testimony, I'm still not completely convinced. Bicameralism, I understand. I've seen it work. I know what I like about it and what I don't like about it. In Montana, we have a real wealth of talent on bicameralism, and I think we should draw on that talent in determining any rules for procedure that we write into the bicameral section. When the majority of legislators that I talked to tell me what they want and need, I'm inclined to agree with them and take their word as honorable men that they know what they need. Now, what do they want? They want more time. They want a deadline to work for. They do not want annual sessions where the flood of trash bills comes in every year, each requiring a hearing and action. To give you an instance, there are a large number of resolutions come into the Legislature. I became quite disturbed about these resolutions in 1967 so the next one that was introduced, I followed through as best I could. This resolution happened to be one on the import quotas asking the Secretary of Agriculture to reduce the import quotas on beef. Now, as a beef producer, I should have been vitally interested in that resolution. One copy went to the Secretary of Agriculture, one to Senator Mansfield, one to Senator Metcalf. I doubt if any of the copies got by the first secretary's trash can. But anyway, by the time we figured it out, as close as I could figure, by the time it got through the House, it cost $850 and it still had to go through the Senate. These are the kind of things that I think you open up when you require annual sessions. Now, also, they want an opportunity to meet annually to discuss the budget, what the Senate Finance and Claims Chairman stated; what he thought was really necessary was that the interim committees—the Senate Finance and Claims Committee and the House Appropriations Committee could work full time. They could have the budget ready. He considered that it would be very possible that merely 5 days would be required to come in, explain the budget and act on it in the off-year but he felt that was necessary. They wanted flexibility in which they could meet or they could not meet as they desired. When the Chairman of the Senate Finance and Claims and the Chairman of the House Appropriations Committee say that the minority report on bicameralism is what they need and want, I'm inclined to agree with them. Now, we discussed this at some length the other day. I'm not going to go into it all. I think there was one misunderstanding as to how it would work. Now, I'll give you an example; this is on page 57 of the Legislative article, under the situation as it is stated in the minority report, the Legislature could meet for 70 legislative days. They could adjourn. They could meet again the following January for an additional 10 days. If the 10 days was not adequate, by a simple majority vote, they could extend the session for another 5, 10 days, whatever was required. That's one example. Another example of what they could do—they could meet for 20 days, introduce the bills, adjourn for 20 days, meet, discuss bills, possibly pass them in another 40 days which would involve 60 days. They could then adjourn, meet the first of September for 10 days, would be 70; they could then adjourn, meet the following January for another 10. I submit that that's real flexibility and I would ask your serious consideration that we reconsider Article Number VI of the Legislative article.

**CHAIRMAN GRAYBILL:** Mr. Furlong, the Chair would like to know, did you vote on the prevailing side originally?

**DELEGATE FURLONG:** Mr. Chairman, I have to be honest. I'm sure I did but I don't know as I could prove it or not.

**CHAIRMAN GRAYBILL:** Well, we'll presume you did, if you are sure you did. We have to put it in the journal. All right.

Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I oppose the motion to reconsider for two reasons. First, I think we have to recognize that the citizens who are elected to represent us are going to have sufficient integrity not to abuse any particular right or privilege they may have with respect to sessions. If there are a great number of bills introduced, I think it's the right of the people through their representatives to have that done. It's the responsibility of those who serve us to determine which bills have merit, which do not. But more than that, I think the committee report that we have before us was in the making for some 3½ to 4 weeks and I think we ought to ascribe some integrity to the report of that committee. If each time someone should question some particular facet of it, after it has been debated and decided, and we're going to submit a motion to reconsider, the work of this Convention will never finish. And I say here and now, it's time to stop reconsidering matters that have been under study and discussion by the committees, unless there is some unusual fact or some gross inconsistency that would not serve the interests of the people. I oppose the motion to reconsider.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** (Inaudible) . . . members of the assembly, I favor the motion to reconsider. I think that this is a very important part of our Legislative article and I think it may determine whether or not our Constitution is going to be adopted. Because I have talked to my constituents and I think I expressed to you yesterday, that my constituents are quite liberal; they have had no criticism of what we had done until they read this where we had given 90 days each year to the Legislature and they said, you guys are crazy over there. You're going from one extreme to the other and I think that is exactly what we've done. I think that the request to reconsider is very much in order.

**CHAIRMAN GRAYBILL:** The House will be at ease for a minute while we change the tape.

(Tape Changed)

Committee will be in order.

Mr. Hanson.

**DELEGATE HANSON:** Mr. President, I rise in support of Delegate Furlong's motion to reconsider Section 6. I was home over the weekend and I attended a meeting of my constituents in Teton County, and they were vitally concerned about extending the Legislative Session for 90 days every year. I am more concerned, I would say, about this than anything else that we talked about, and I am sure that if we pass what we have already passed—if we do not reconsider our action —that we're going to meet with a lot of opposition in the rural areas; I don't know about the urban areas, but our rural people are vitally concerned with this. I support Furlong's motion to reconsider.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, I also support this motion to reconsider because I think it is the only way we can salvage what I think is the dreadful error made last night in extending the present size of the Legislature into the future. I want to pause a moment to redo this. It seems to me that most of us were elected on the platform of doing something about our state government, which mainly was to reform the Legislature. The people, I think, wanted the Legislature reformed. They wanted the expense of government reduced by making it more efficient, and they generally thought maybe annual sessions were a means of doing this. Now, look at what we have done up to this moment. We've eliminated the 60-day limit; we've eliminated the 2-year limit; we have eliminated the per diem limit and, in effect, on the basis of how it is up to the moment, we have quadrupled the expense of the Legislative Session. The alternative is either—as we will present it to the voters now—is either to keep this monster that we have created at 4 times its former cost, or to submit to the people the untried unicameral alternative. And I think that the general reaction of the voters will be that if that's how these people think that they are going to treat the voters and improve government, down with it and we will have succeeded in eliminating the hope of having our Constitution approved by the people. I feel this very deeply. I think we just about have lost the war. The reconsideration by limiting the time for these sessions is some comfort in this direction, and this is why I support it. Mr. Dahood mentioned the respect we should have for the committee's recommendations. I call to the attention of the House that the committee did not recommend any 150 member monster to this body with completely unlimited blank check expense account for the future, and if we are going to respect the committee's recommendation, we better do it in that respect also.

**CHAIRMAN GRAYBILL:** Mrs. Payne.

**DELEGATE PAYNE:** I would like to have a clarification of what do you mean by 90 days? Is this 18 weeks or is this 90 days? Well, what is a legislative day? Is that a 7-day week or a 5-day week?

**CHAIRMAN GRAYBILL:** Mr. Cate, do you want to attempt to answer Mrs. Payne?

**DELEGATE CATE:** My understanding of the difference between calendar and legislative days, it is this—

**CHAIRMAN GRAYBILL:** Mr. Cate, hold that mike down by your tie. That a boy, thank you.

**DELEGATE CATE:** Yes, Mrs. Reichert's daughter told me how to hold this. (Laughter) And this is the right way. My understanding of the difference between calendar and legislative days is this, that February has 29 days. Those are called calendar days. Legislative days are the days that the Legislature actually works out of that 29 days. So, if you had a 5-day week in February, there would be about 28 legislative days in the month of February. So, legislative days are the days they actually work; calendar days are the actual days on the calendar. And the present system is 60 calendar days. That's the present system is 60 calendar days. We have changed that to 90 legislative days.

**DELEGATE PAYNE:** So, you really have changed it to 18 weeks. I don't think John Schiltz—

**DELEGATE CATE:** We've extended it.

**DELEGATE PAYNE:** Yes. Thank you.

**CHAIRMAN GRAYBILL:** The issue is—Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. Chairman, I, too, support the motion to reconsider this.

**CHAIRMAN GRAYBILL:** The issue is on Mr. Furlong's motion to reconsider Section 6 of both the Legislative and bicameral proposals. So many as shall be in favor, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it and so ordered. Mr. Furlong, do you want to make a motion now?

**DELEGATE FURLONG:** Yes, thank you, Mr. Chairman. I move to amend by substitution on page 33 of the Legislative article, line 9, the number "60" for the number "90". Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Furlong.

**DELEGATE FURLONG:** I would like to take this opportunity to thank the assembly for the support. I'd also like to say that I also am concerned about challenging—if that's the right word—the majority report. And I do not do so lightly. I think I understand the amount of work that went into it. I am not trying to take away the time from the Legislative Assembly. That would be the last wish that I have. I am trying to change the procedure. I do believe that the Legislature ought to work against a deadline. We have made it easy for them to change that deadline by a majority vote of the group. As I understand the legislative days, and Mr. Cate certainly helped me out, we're not talking about 60 calendar days; we're talking about probably 5-day weeks. And a 90-day session would extend that to 4½ months. Not only would it extend it to 4½ months, but in other provisions we have allowed the Legislative Assembly to adjourn and reconvene. If you take those 4½ months and take an Easter week out plus 1 or 2 weeks of recess for work or study, we're talking in terms from 5 to 6 or more months for each Legislative Session. I would repeat again. This is not to change the amount of time they can have or need. It is to change the procedure for them getting it. I do believe that it would make them more responsible to the people of the state. I do not think it hurts the Legislature to have to justify an extended session by a majority vote of the membership. I would appreciate your support of this motion.

**CHAIRMAN GRAYBILL:** Mrs. Bugbee.

**DELEGATE BUGBEE:** Mr. Chairman. I think I mentioned this before, but I would like to make the suggestion that the minority report include—now I'm on page 16, line 20—it seems to me that this is a crucial thing that the minority report has left out, and whatever we decide to do this morning, I'd like to make sure that this is in there. And I quote, any legislature may increase the limit on the length of any subsequent session, end quote. The minority report does not have this in there and I believe it should be in there.

**UNIDENTIFIED DELEGATE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Just a moment. Well, Mrs. Bugbee, just to clear that matter up, I'm not sure I agree with you. On page 33, which is the majority report, we have the two majority reports adopted now, and both of those have that sentence in it on page 33 and on page 4. Now, the minority report was referred to but the minority report has not been adopted. At the moment, we have reconsidered Section 6—on page 3 and 4 and Section 6 on page 33. And each of the ones we've reconsidered has that sentence in it, and the issue that Mr. Furlong raises is a different issue; it changes "90" to "60". So, I think if we do no more than Mr. Furlong says, you're perfectly protected.

**DELEGATE BUGBEE:** Well, I'm just talking to Mr. Nutting's proposal.

**CHAIRMAN GRAYBILL:** All right. Well, Mr. Nutting has not yet moved the minority report. Mr. Nutting, I see you up.

**DELEGATE NUTTING:** Mr. Chairman. As a substitute motion, I would like to move in the bicameral section, that the minority report be adopted in place of the majority report. I think I've spent plenty of time on this. I believe we all understand it. I hope—I had to do it—I had to present my arguments in asking that you reconsider. I would be happy to answer any questions that you might have but I think we've discussed this long enough and I merely make that motion.

**CHAIRMAN GRAYBILL:** Do I understand you, Mr. Nutting, to have moved the minority report as it appears in italics on page 57?

**DELEGATE NUTTING:** That is correct—that it be adopted for the bicameral section.

**CHAIRMAN GRAYBILL:** Very well. For the bicameral section only, Mr. Nutting has moved a substitute motion which reads as follows—it's on page 57. "Following the general election, the legislature shall meet in regular session before March 1st or earlier as provided by law. The regular session shall not exceed 80 legislative days. Any business, bill or resolution pending at adjournment of the session shall carry over with the same status to any future special sessions at biennium. Special sessions not to exceed 30 days may be convened by the governor or a majority vote of the membership of each House. Regular and special sessions may be extended by a majority vote of each House." That's the issue before us now on the substitute motion of Mr. Nutting.

Mr. Cate.

**DELEGATE CATE:** I move to amend Mr. Nutting's motion. On line 7, page 57, to insert after the word, "session",—when it says in regular session—the word "annually", between "session" and "before". So that it would read, "in regular sessions annually before March 1st or earlier as provided by law." I offer that as a substitute motion to his.

**CHAIRMAN GRAYBILL:** Very well. Mr. Cate has made an amendment to the substitute motion to add the word "annually", to line 7 so that the first sentence would read, "Following the general election, the legislature shall meet in regular session annually before March 1st or earlier as provided by law." We're discussing Mr. Cate's amendment.

Mr. James.

**DELEGATE JAMES:** Will Mr. Nutting yield to a question?

**DELEGATE NUTTING:** I yield.

**DELEGATE JAMES:** Doesn't Mr. Cate's proposal destroy the whole sense of this minority proposal?

**DELEGATE NUTTING:** It's essentially the same as the majority proposal, except that it cuts the time limit down 10 days, yes.

**DELEGATE JAMES:** Well, isn't it your idea on this, Dick, that we have a choice here between the majority proposal in the unicameral and the minority proposal in the bicameral? I would resist the motion because I feel that it destroys the purpose of the substitute motion.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. President. To clarify our position—now we're talking about the minority report on page 57 which Mr. Nutting has just moved, and this applies to page 43 of the majority bicameral proposal.

**CHAIRMAN GRAYBILL:** That's right. It applies to the bicameral only.

**DELEGATE AASHEIM:** Yes, and I resist the motion to make this an annual session because this is the purpose of the minority report, to give the Legislature some flexibility. Assuming that the Legislature will meet in January as it has in the past, and they get their work done in 60 days, they still have 20 days to use any time they wish. Now, as I—today, we have appropriations by Congress, which usually come the latter part of the year. Maybe there's need for the Legislature to meet again in November or December to consider that appropriation by Congress. And maybe, if our Legislature does meet at that time, they can then take care of any necessary matters that should be taken care of the following year, which precludes the necessity for coming back the next year. So I would resist the motion to change this to annual sessions. This is flexible in the minority report and I think the bicameral section wants this very much.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman. Let me see if I can go one thing and make plain to you about our committee because I think maybe you might not understand how we worked. (Laughter) No, I'm really serious about this. The majority—the people on the majority side from our committee have not spoken to many issues. For one reason, we go with the majority report and we have it here before you. As is the case on almost everything, a majority report of a committee gets presented and then we get to debating upon any and every minority report with amendments and substitutions. And seldom, if ever, get back to a discussion of the majority report and this happens again and again; and this may be a good moment to say that our committee worked on the best bicameral proposal we could discover. Now, when we come here, people infer that those of us who happen to prefer a unicameral are not interested in the bicameral report and, therefore, if you will adopt a minority bicameral report, you will really be going with what the quote, bicameralists, unquote, want. All I'm saying is that I am as much interested, though I favor a unicameral system, I am as much interested in having a good bicameral Legislature as I am in unicameral and consistently here, I have voted for what I thought was the best bicameral section. I realize, and some of my friends have said, "Let's vote for the—let's let them get the very worst bicameral report they can get," following Mr. Garlington's line of reasoning, I mean his analysis is correct. That you can put together here a bicameral proposal that looks just exactly like what we have now and this seems to be the general tendency. We listened to testimony—all of us—when we ran—I think every one of us, if we'll just stop and think, realize the people of this state do not want exactly what we've got. To infer that the people will oppose change in the legislative system is to make an inference that's unwarranted. To suggest that legislators formerly do not want annual sessions, but prefer biennial sessions, is to fly in the face of polls that were made of legislators for about 3 or 4 sessions before this. We absolutely know that legislators and people prefer freeing the legislative process. Now, on the matter of Mr. Furlong's motion which is clear, sensible, and has some real point to it, I could see, as a member of that committee, acceding and saying that that's a sensible kind of a change to make. I'm a little hesitant to go through all the business of why we need annual sessions, of the business of annual appropriations and all the rest, so I simply will underscore things that were said before, if you will remember them, and remind us that we voted 70 to 24 on this issue once before. Let's not be stampeded into doing something exactly opposite. If there are, as Mr. Furlong's motion is I think, some constructive changes to make to our majority opinion, then let's proceed to make them.

**CHAIRMAN GRAYBILL:** Mr. Brown.

**DELEGATE BROWN:** Mr. Nutting, would you yield?

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** Yes.

**DELEGATE BROWN:** Dick, I am for your minority report as to both unicameral and bicameral. Now, is there some reason that we can't have this on unicameral too?

**DELEGATE NUTTING:** No, I merely made the motion for bicameralism because I am accepting the word of the bicameralists who I've talked to—those two chairmen that I mentioned. And although I'm not familiar enough with the unicameral to really say whether that is what they want, what would be required; if the motion would be made to accept it on both, I would not resist it.

**DELEGATE BROWN:** Well, Mr. President, my worry is this. If we adopt Mr. Nutting's minority report, which I am for, and don't on unicameral, we're going to have a ballot that's going to be confusing; you'd be voting for unicameral and annual sessions or bicameral with your flexible provision. And we're going to confuse the voters; and I think we should have either one report to include the unicameral too, so I can vote my conscience.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President, I support Mr. Nutting's proposal on these grounds. If you purport to have 80 or 90 day sessions, you are going to preclude a great many people from being able or having the desire to serve in your Legislature. People in agriculture, if you're going to take 80 or 90 days out of their most productive time, they're just simply not going to be available to serve in your Legislature. Businessmen who have a business, if they're going to have to take 90 days, 80 days annually away from their business, you're going to very severely limit the type of people that is going to serve on the Legislature. I feel, further, that to people whom I have talked to, and I have traveled quite widely over the state, are not of a necessity interested in annual sessions at this time. They wish to provide the vehicle that may be used if it is necessary to have annual sessions, but to lock it into the Constitution provides a very costly method that the people of Montana, at this time, are just plain simply not ready to buy. They did want to provide your Legislature with the flexibility that they could call themselves into annual sessions if they saw the necessity. And I suggest that this is exactly what your minority proposal does propose, and I suggest that this would be one of the qualifications for a bicameral Legislative Session. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** (Inaudible)...resist the motion by Mr. Cate but, frankly, I don't believe that the state needs annual sessions right now. It may later on. I think Mr. Furlong's motion is a step in the right direction and certainly 60 legislative days is a great plenty. I hesitate to speak because I know ex-legislators don't have too good of standing in this group, probably, but I've always felt that the problem in the bicameral system is that we have too many bills, rather than not enough time. I think the minority report does give the flexibility that it needs. I think it's important that you have the in-between session for fiscal matters, and I think that could be handled very nicely with the minority report as now, but if you're going to lock yourself into an annual session, you're going to be flooded with the same number of bills every year, I'm sure. If you can use this minority report, which has the flexibility of having all the bills you need one session, limit it to fiscal affairs that second year, which you could do under this situation, I frankly feel that this would be the better way to go, the most economical way to go; I think it would serve our people better and I believe that the people are more interested in having as short of legislative days as possible. In fact, I wouldn't even object if this minority report said 60 days instead of 80 legislative days.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, will Mr. Nutting yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** Yes.

**DELEGATE HELIKER:** Mr. Nutting, I feel very much as Mr. Brown does, that whatever we do in regard to the frequency and duration of the Legislative Sessions, that it ought to be the same for both the unicameral and bicameral proposals. Now you said you would not oppose such an amendment. Would you make the change in your own motion so that it will apply to both?

**DELEGATE NUTTING:** Mr. Heliker, I would prefer that the two motions were made separately, but if someone else would be willing to make the motion, why I would not oppose it if it was made for both.

**DELEGATE HELIKER:** Well Mr. Chairman, then I will so move.

**CHAIRMAN GRAYBILL:** No, no motion is in order now. We have an amendment and a substitute and an amendment to the substitute and until we get rid of the amendment, there are no other motions in order. You may make it later, Mr. Heliker.

**DELEGATE HELIKER:** After Mr. Cate's motion is taken care of?

**CHAIRMAN GRAYBILL:** Well, we've got to have some room on the docket. We can only handle these three matters at once, but you may make it later.

Mrs. Robinson.

**DELEGATE ROBINSON:** Yes, Mr. Chairman, members of the Convention, I would like for you to take a look at what you're doing to this Legislative Article and what you're doing to the Legislature in this state. If there was one clear issue in the campaign for this Constitutional Convention, it was a mandate for changing the Legislative branch of government. Now, yesterday, you amended the majority report; we're back up to 159 members of the legislative body, 5 more than we have had at times. Now, here we are again at session. The minority report calls for a biennial 80 day session. Now, what have you done? You've increased that number by 20 days. The Legislative Sessions in the past few years have not even completed their business within the primary 60 days that were allotted to them; last time, it took 106. You say that the people of Montana aren't ready for an annual session. Well, why don't you give them a chance to decide that? You are not making any changes in the Legislative branch at all if you go for this minority report. I think that the bicameralists are very much in favor of this because they realize it's going to be very hard to sell a 159 member Legislature to meet every year for 90 days. I agree. Think if you don't want to reconsider, you ought to reconsider the size and not the session because the state's business needs to be carried on whether you have 159 or 100 members. The minority proposal provides flexibility. Mr. Wilson made the point that if you have to meet every year, the people of the state—certain businessmen—are not going to run if they have to meet every year. With the flexibility under the minority report is based on special sessions. They may call themselves in the special session. Well, I submit to you that if the businessmen that do run for a biennial session because they don't want annual sessions, because it's too inconvenient, they're not going to find it any more convenient to call themselves into special session when the business of the state requires it. I think you'll be making a drastic mistake if you completely revert back to the present Legislative system. I would encourage you, if you do not like the majority report as was approved on Thursday, that you would at least consider Mr. Furlong's amendment which would be 60 legislative days each year.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman. I've listened to the motions, the substitute motions, the argument and the debate ever since the majority report came to the floor. And insofar as the bicameralists are concerned, apparently as far as they're concerned, they're alma mater right or wrong. This is the system they know and this is the system they love, and this is the system they want to keep for the rest of Montana's history. I think that's entirely up to them, but they're here jousting with windmills. They come out with a majority report with respect to a bicameral system and they can't agree among themselves as to what particular option ought to be given to the people of the State of Montana. We can stay in Convention Hall for days and days with respect to these variances that one prefers over the other. I think they owe a responsibility to the 100 delegates here and they owe a responsibility to the people of the State of Montana to come out with a committee report, with respect to bicameralism, that can be accepted and can be submitted. My opinion, at this point, is that perhaps the work hasn't been done with the type of diligence and intelligence that we're entitled to expect of a committee report. I therefore move that, with respect to the bicameral section of the majority—or the committee report, that the matter be recommitted.

**CHAIRMAN GRAYBILL:** You may move that after we handle one of these articles, but you can't move it now because we got too many motions on the table or, at least, you can't move it now. I don't know whether you can move it then; it'd be a matter of reconsidering the whole thing. Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman. In this discussion we have been saying originally 90 legislative days. Even my seatmate said 60 legislative days when referring to Mr. Furlong's motion. I call to your attention that on line 9 of page 33, it is now recommended that we have 60 legislative days or less annually. I contend that we must have annual sessions. I have several bills I was going to discuss, in the event of a unicameral-bicameral discussion in that area, but I think that I will use these bills as examples of the need for annual sessions because, in all honesty, I think it is the time that is so critical in our society for a good Legislature. In 1969, House Bill 99 was passed. I wonder if you remember what that did to our state. This allowed the deduction of the federal income tax in addition to the standard deduction. This little boo-boo cost us an estimated $3,000,000. This, I think, would not have happened if the legislators had had ample time to look this bill over. Special session House Bill 15 in 1969—the purpose of this section was to have monthly payment of withholding agents in place of quarterly. Now, when the bill was amended, our Legislature, under pressure, inadvertently had the out-of-state employers listed, and missed the resident employers. In effect, this bill applied to only 5 percent of withholding transmittals. This little error cost the state $5.2 million and I have this information from a very reliable source which I'll give to you if you come to me. Do you remember in 1969, the $7,000,000 error that came from the Senate? It was headline news for days. I contend this, too, is an example of inadequate time. And then last session, I happened to be here on the last day, the 106th day. If you could've been in the Senate chamber and seen the furor—even Tom Judge was flustered. A page was lost from a very important bill. The House had already gone home. They scurried around looking for this missing page. I contend this would not have happened if there had been adequate time; and I feel that, even more important than the unicameral body, is an annual session. And I say, it's 60 days or less, it's conceivable they may meet 60 days one year, maybe just 20 the next, but it's 60 days or less.

**DELEGATE AASHEIM:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I want to forgive the Chairman of the Bill of Rights Committee because I'm sure when his report comes out, we're going to think the same thing, they didn't have their work done. (Laughter) But, just in case there's a doubt in your mind—and I think if Mr. Dahood can settle an argument, I'd like to have him go to North Ireland. (Laughter) You can send this back to committee if you want and it'll come out the same way, because we have nine dedicated unicameralists and we have five dedicated bicameralists, and we're pretty much sold on what we presented to you. And I suppose maybe when you got this report, where we all signed it and, by the way, there were a couple who didn't sign this report; it's because they weren't here that day. I'm sure that they would have signed it if they were here. But, understand, this is—these nine unicameralists were dedicated people. They had a sincere concern about doing something better for the Legislature. As you all did, you came here with a dedicated purpose and you have your own opinions, and maybe we are old foggies, maybe we do have a liking for tradition, but we have seen it work and we believe in it and we think, maybe that your considerations probably a little hasty because you thought it was a majority report when it first came out. And this is the danger of unicameralism. And we're asking you to reconsider your action today about this very important proposition, about the bicameral report which was—or the minority report of the bicameral. We're asking you to reconsider. If you've made the right judgment the first time, we'll abide by it.

**CHAIRMAN GRAYBILL:** Mr. Anderson, do you want to announce your presence so you can vote?

**DELEGATE OSCAR ANDERSON:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman. There seems to be complete polarity on this thing. We know how the unicameralists feel; we know how the bicameralists feel. The unicameralists want one thing and all the proponents have spoke for that. Also, the bicameralists; they want this proposal on page 57. So, why don't we get down to business? And if we're going to put this on the ballot, we can submit this to the voters. This seems to be the feeling of each party, so let's get on with the show.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** I would like to ask Mr. Aasheim a question, Mr. Chairman, if he'd yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Aasheim, will you yield?

**DELEGATE AASHEIM:** I will.

**DELEGATE HARRINGTON:** Mags, do you feel that in the past four or five Legislative Sessions that, without annual sessions, that it's been successful? In other words, the way it's been run every other year; do you think this has been successful, this type of a Legislature? You said, the old system has worked. Now I just point a question. Has it worked?

**DELEGATE AASHEIM:** (Inaudible)... last two sessions?

**DELEGATE HARRINGTON:** In the last three or four sessions. Have they completed their business on time and has it caused a lot of trouble throughout the state because they haven't been able to do this?

**DELEGATE AASHEIM:** Mr. Harrington, I'm glad you asked that question. The last session, as I have said before, had the sales tax to argue; they had reapportionment to argue; they had a matter of reorganization of state government and they had multiple, major problems which gave them a black eye. The previous one was not as difficult as the last one, and the further you go back, you'd find that they went 9 days, 8 days overtime so let's get back to normal. Let's get back to normal times and we're allowing 80 days. We're just about allowing twice as much time in this minority report. Let's give it a trial because we have the flexibility here, Dan. If they need more time, they can have it and I say "Let's", it doesn't make any difference what system you have. We're not going to be happy with it. You can go to Russia, you can go to China, you can go to Canada, you can go to Great Britain, you can go to Ireland. They're criticizing their government. Let's try to work this one over so it'll work better than we have in the past.

**DELEGATE HARRINGTON:** Thank you for your answer but basically, I feel that one of the reasons we were sent here was because we have a regressive Constitution, and to write a Constitution that would update. I think one of the things to update the Constitution is annual sessions and I feel this is the answer. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman. I want to echo the sentiment of Delegate Harper. I think we're here to be statesmen and to be Montanans. Frankly, I've enjoyed the last 7 or 8 hours of debate. It's been gamesmanship as far as I've been concerned. I've watched the bicameralists destroy their position with respect to the public forum but I think it's time to perhaps come to their assistance. I think comments have been made that by increasing the size, they've taken away whatever appeal they might have insofar as the public is concerned. Now, they're engaged in warfare with respect to another section that certainly cannot help their cause, and I think we should all be dedicated to the proposition that we're going to put forth the two best legislative plans that we can so that the people will have an informed choice. I move at this time, for the benefit of all of us, that this Convention, this Committee as a Whole, recommit Section 2 of Article V on page 32 with respect to the size, and Section 6 with respect to the length of the sessions, to the committee for further study, debate and discussion and report to the Committee as a Whole.

**CHAIRMAN GRAYBILL:** All right, a motion to recommit does take precedence. I've checked this with the Rules Committee. It would take precedence over the motions pending, so the issue is on whether to recommit to the Legislative Committee the bicameral Sections 2 and Section 6.

Mr. Davis.

**DELEGATE DAVIS:** Mr. President. Much as I hate to disagree with my good friend and neighbor, Mr. Dahood, we spent—we're on our 4th day on this article. We've got some other very important articles and who's going to have time to work anything out. Let's wrestle this thing out and settle it here and now and then go on to the next because, as they stated, they go back—they all know in their own hearts and in their own committee, their positions. And I don't think if you recommit it for a month or a year, it's going to change. It's going to be up to this 100 people today or next week to decide, and I would prefer just settling the thing right now and going on with our work.

**CHAIRMAN GRAYBILL:** Mrs. Cross.

**DELEGATE CROSS:** Mr. Chairman. I would like to support Mr. Dahood. I think that both of those subsections need attention. I am inclined to think that the size is much too large. I'm also inclined to think that the length of the session—annually also has to be determined. I support Mr. Dahood.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman. Like Mr. Davis, Mr. Dahood is an old friend and a close neighbor, but we've got to get down to work. And we cannot afford to be sending things back to committee at this stage. We've got roughly 3 weeks and, I think, 3 days left, and then we're out of money. We've got to get down and settle and get a vote on this thing and get the Convention moving. And I seriously urge this Convention to get down and vote on these matters and get the issue decided.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Yes, Mr. Chairman. I would just like to point out that we didn't arrive at Section 2 and 6 by pulling them out of the air. I mean, we spent a great deal of time on these already. I have a feeling that if this Convention floor has not been willing to accept the committee's recommendations now, they're not going to be willing to accept the committee's recommendations next week. I mean, we spent time on these. These aren't things that we didn't consider. You just—if you want these changes then you're going to have to make them on the floor. Or you're going to have to go with the report because I doubt very much if the committee would come back with anything very different than what we came out with in the first place.

**CHAIRMAN GRAYBILL:** Mr. Berg, I'm going to recognize you next but the Chair has been advised by the Rules Committee that perhaps I'm in error. Section 6 has been reconsidered and is before you. Section 2 has not been reconsidered and is not before you and apparently, I can only allow recommittal on Section 6 unless someone makes a motion to reconsider 2, and then we'd have to consider that. So, I think, we'll—Mr. Dahood, I'll allow your motion as to 6 but not as to 2 at this time. Very well. Mr. Dahood accepts that.

Mr. Berg.

**DELEGATE BERG:** I will move that we now reconsider Section 2. Mr. Chairman—

**CHAIRMAN GRAYBILL:** Just a sec—

**DELEGATE BERG:** I came to this Convention with the idea that we were going to write a Constitution that I could go back home with, that would represent reform and that would give the people at least an even choice between the unicameral and the bicameral Legislature. Now, with the situation as it is before this floor, so far as I am concerned, I cannot conscientiously go back to the people and fairly discuss either unicameral or bicameral systems, unless this measure is amended so that the people are given a choice of a bicameral Legislature meeting biennually or a unicameral Legislature meeting annually. I don't think that the people will have much choice except between a unicameral system meeting annually and the old Constitution. And very frankly, I am unwilling to see all of the rest of the reform that I'm sure this new Constitution will have beset upon that sort of a choice. I want the people on this—on unicameral and bicameral systems to have a choice, a real full choice. Therefore, I ask you to reconsider what—the mistakes we made last night with regard to the size of that bicameral system, and I agree that if you do give it reconsideration, I would join with Mr. Dahood in sending both Section 2 and Section 6 back to the committee for redrafting in such a manner that you will give the people of Montana a real, legitimate, fair choice between not only a unicameral and a bicameral system, but between annual sessions or biennial sessions. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Berg, the Chair wants to inquire. I understand your motion to reconsider is the Section 2 in the bicameral article, is that right?

**DELEGATE BERG:** Yes, of the bicameral

**CHAIRMAN GRAYBILL:** All right. For the information of the body, the motion to reconsider also takes precedence, and it is above the motion to recommit and it is proper to consider Mr. Berg's motion ahead of considering the motion to recommit by Mr. Dahood. So, the issue is Mr. Berg's motion to reconsider Section 2. Is there discussion on that?

Mr. Berg.

**DELEGATE BERG:** Mr. Aasheim tells me it's page 41 where Section 2 is.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I would like to point out, I don't challenge Mr. Berg nor do I question him, but there is a procedure under the rules here for making a motion to reconsider. And absolutely necessary to making such a rule is that you at least state that you voted on the prevailing side the last time that issue was decided. Now, neither Mr. Furlong nor Mr. Berg this morning asserted that he had voted on the prevailing side, and I think he should make that assertion.

**CHAIRMAN GRAYBILL:** Mr. Schiltz, you're absolutely right and the Chair is wrong not to have challenged them, but I really didn't have a chance to break in. Mr. Berg, did you vote on the prevailing side?

**DELEGATE BERG:** To the very best of my knowledge, I did vote on the prevailing side when Section 2 was first taken under consideration. I did not vote on the prevailing side when it was amended last night.

**CHAIRMAN GRAYBILL:** What does that mean, Mr. Murray?

**DELEGATE MURRAY:** He's out of order.

**CHAIRMAN GRAYBILL:** All right, he's out of order.

Mr. Harrington.

**DELEGATE HARRINGTON:** Having voted on the prevailing side on the amendment last night, I move to recommit Section 2.

**CHAIRMAN GRAYBILL:** You mean to reconsider Section 2?

**DELEGATE HARRINGTON:** Yes.

**CHAIRMAN GRAYBILL:** Reconsider Section 2 of the bicameral session. All right, we'll ascribe the motion to reconsider to Mr. Harrington, Mr. Berg. Now, we'll discuss the motion to reconsider Section 2.

Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman. I don't think I'm alone but I am at loss. I can understand that a motion to recommit might take precedence, but I don't see how a motion to reconsider can take precedence over a motion for reconsideration that's already before the floor.

**CHAIRMAN GRAYBILL:** Well, the Chair will consider this a parliamentary inquiry and we'll try to point it out to you, Mr. Furlong. All right, in your rule books if you care to look with us, on Rule 60, privileged motions, when a question is under debate, no motion shall be received except—then you go on down and you get to Number 4 as a motion to reconsider. Now, we did have a motion from you, Mr. Furlong, to reconsider Section 6 and we took it up, and we passed the motion to reconsider and then we debated it under the normal debate procedures, and when we got down through Mr. Nutting's substitute motion and Mr. Cate's amendment to the substitute motion, Mr. Dahood made a motion to reconsider—or I mean to recommit. It's actually a motion Number 10 on page 27 of the rules to commit. The motions listed in this rule shall take precedence in the order in which they stand arranged. Now, we were then debating Mr. Cate's motion to amend and a motion to commit takes precedence over Mr. Cate's motion to amend. Now, at that point, we had Mr. Dahood on Section 2 and Section 6 to recommit. The Rules Committee correctly pointed out to me that we did not have 2 under reconsideration. I pointed that out at that point and Mr. Berg arose and now Mr. Harrington. They're back up on Number 4 which has precedence over recommit. So, they have a right to move reconsideration of 2. If they're successful, I presume Mr. Dahood will renew his motion as to both 2 and 6. So, the issue before us is Mr. Harrington's motion to reconsider Section 2 of the bicameral article, which deals with the size of the bicameral article.

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I rise in support of the motion to recommit for this reason—to reconsider first, and I also support recommitting it for one more last chance to work out a reasonable system for both sides to give a small committee a chance to work the thing up and I think it's worth even taking a whole day, because this is the key section in the whole Constitution, and we've got to have it right, and we can't do it with 100 of us thinking here. If they'll go back and open their minds again and see just what can be done, then it seems to me, maybe we can get more informative debate, because I don't think there really is that much difference on what we're doing here. We're talking about limiting the session and annual sessions, and those two things are very important, but some system ought to be able to be worked out whereby we can give the Legislature more time under either system. Or something might be worked out about the size and let them go back and think it over in the quietness of the committee room (Laughter) and maybe we can get some—we can settle this matter to satisfy everyone if it's just words; and if we can't, then we can at least fight it off tomorrow or the next day. And I suggest if we do that, then we could get on with the business of the Convention and we could start in on the Executive Article maybe; but this issue is so important I think that it needs another look at and see if everybody can't pull together and get some language that really will settle the issue so that we can intelligently vote. So I think we ought to at this time, unanimously, reconsider. That will then get the procedure right; then I think we ought to unanimously recommit.

**CHAIRMAN GRAYBILL:** Mr. Roeder.

**DELEGATE ROEDER:** (Inaudible)...oppose the motion to recommit. I think what we're proposing to do is to send back to committee to undo what we did here on the floor last night. I think the original reports were very good. I think what we're also doing is trying to accommodate the Nutting-Aasheim axis on this issue, and I think that the animus behind the Nutting-Aasheim axis has not been brought out candidly in this body. What is it that motivates this axis? It is an unwillingness to accept change. That's what it is. It's a very old issue too because the change they wish to try to frustrate are the implications of Baker versus Carr. That's what they're trying to do. This is an old issue in our society. It goes back to Putney in 1647 when we started debating whether we're going to represent people or turf and they proposed to represent turf. Mr. Chairman, I oppose.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman. I think we've gone this long and maybe we're closer to a vote than you think. I've got a simple little plan. If we'll vote against Mr. Harrington's motion, vote against Mr. Dahood's motion, vote against Mr. Cate's motion, vote against Mr. Nutting's motion and pass Mr. Furlong's motion, I think we'll be where we ought to be. (Laughter and applause)

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman, I wish to speak in opposition to recommitting and I call to your attention that on page 13 of our Legislative proposal, regarding size, the majority report was never voted upon. We never had an opportunity to vote on whether we wanted less than 75 nor more than 100 in our unicameral body. The reason we did not have an opportunity to vote, the amendment was made and I really believe that perhaps when some people voted for the amendment on not less than 100 nor more than 105, they were voting to get that 105 ceiling more than to get the 100 to 105. And here we want to recommit and we've never even paid attention to the majority proposal on unicameral, the initial 75 to 100 figure; we've never voted on it. I do not want to recommit.

**CHAIRMAN GRAYBILL:** (Inaudible)... just to clear the record, Mrs. Reichert, we did vote the 1st day on Section 2's size and it was adopted 71 to 17, as amended.

**DELEGATE REICHERT:** (Inaudible)... Mr. Chairman, as amended, was 100 to 105.

**CHAIRMAN GRAYBILL:** Right.

Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. As a member of the Legislative Committee, I attended all of the various meetings, I think every one, and there was a difference of opinion in the committee which I don't think is going to be changed by receiving this material back for another go-through. Personally, I'm satisfied with the way we're moving along here. I don't win everything that I want and I don't think everybody in here should be expecting to win everything that they, as individual delegates, want. This is essentially a matter of compromise and I think we ought to acknowledge that. So, I am against any motion to recommit. I feel that we have taken action in this body, which I don't approve of all the way, but it has certainly been debated thoroughly, and it's a matter of taking one step forward and two or three slip backs if we're going to go on this way. I came here to get longer sessions because I felt, from experience, that we needed them and I still think that, and we can get them by annual sessions or we can get them by the minority Nutting report where you'll have one session and being able to call yourself back into session. So, I think that has been achieved. Personally, I also think that the number in the Legislature, as in both unicameral and bicameral, is adequate around 100 and I don't think if you cut it back, you're going to gain anything. We took a vote on both of them in the last few days and we arrived at a number that I think is satisfactory. I think we ought to proceed with our work.

**CHAIRMAN GRAYBILL:** No, Mr. Mahoney was up, Mr. Joyce.

**DELEGATE MAHONEY:** Mr. President. I think that Reverend Harper gave us the best thing here. Let's dispose of it. Now, I know and I think that committee's worked hard, and I think they did a beautiful job. Having been on committees a long time and seeing compromises and I think they tried very hard. I think we've listened to the debate around here that I believe the census of this body is in annual session. I introduced the first annual session that was ever introduced in the Legislature. I believe very keenly on it. Now, under this proposition if we don't know you're going to have it, then appropriations are only going to be worked every 2 years, and I want appropriations worked every year. I hate to waste the time. Reverend Harper, I think you had it right. We get down here and get to the meat of the issue as far as the annual sessions is concerned on this proposition. I'd like the 60 days. That doubles the amount of time that they have now. This doubles and I think doubles is enough at this time. If it proves out, later time we can amend the Constitution but you also have a provision to extend the sessions. Secondly, as regard to size, I'm sorry, Mr. President, I'm debating something that shouldn't be debated, but I'd like to get the whole statement out. That as relating to size, this is another issue and I'm not going to take any part in that except I don't see any sense in sending back to committee. Maybe we better fight her out on this line right here. Who was that famous gentleman who says, "We'll fight her on the line"? Let's fight her here.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** May I explain my position why I wanted to recommit it to the committee? I agree. I think Reverend Harper knows precisely what he's doing. My thinking was, if it went back to the committee, Reverend Harper and Mags Aasheim could have one more go at their respective contention and maybe they could compromise it between the two of them there and then bring it back. But if Reverend Harper has it all—if Furlong's motion will satisfy the whole thing, then I'm in favor of that. And I just thought maybe that would be a solution to solve the thing because it is going to boil down, no matter how you cut it, to whether you want an annual session or you don't. And I think that Reverend Harper could actually bring it back here, after talking it over with Aasheim et al, and we could decide the issue. That's why I wanted to recommit it. But if we can solve it—I think that what a good thing to do would be to withdraw all motions and let Mr. Harper point out how he can live with Mr. Furlong's motion. If all the unicameralists can live with it, fine; if all the bicameralists can live with it, fine. Then we can vote the precise issue whether or not we want annual sessions and get on with it.

**CHAIRMAN GRAYBILL:** Mr. Johnson.

**DELEGATE JOHNSON:** Mr. President. Yesterday, we voted for the unicameralists. Today, we are on the bicameral part of the proposal. We are going to have a choice of the bicameral and the unicameral on the ballot. I am opposed to recommitting; I'm also opposed to the suggestion a while ago that there be an addition to our minority proposal here of the unicameral part which would go back to what we did yesterday. Let's give a clear-cut choice and see if we can come to a decision here on the bicameral minority proposal and, if you pass it, the proponents of this minority proposal, which includes me, are stuck with it and so are the people, but they do have a clear-cut choice. Please look at it in that light.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman. We expect the parties and judicial controversy to compromise; we expect labor and management to compromise. Inasmuch as I'm assured by several of the learned members of the Legislative Committee that for them, the star of compromise is unreachable, I hereby withdraw my motion to commit.

**CHAIRMAN GRAYBILL:** Well, the issue is on Mr. Harrington's motion to reconsider Section 2.

Mr. Harrington.

**DELEGATE HARRINGTON:** Well, I feel that I would withdraw this motion. However, I do feel that this should be—at this time I will withdraw it though—my motion.

**CHAIRMAN GRAYBILL:** All right. The motion to reconsider Section 2 is withdrawn. The motion to recommit to the Legislative Committee the bicameral Section 6 is withdrawn. And the issue is on Mr. Cate's motion to amend on page 57 by adding in line 7 the word "annually", so that the first section of the minority report, which is the substitute motion of Mr. Nutting would read: "Following the general election, the legislature shall meet in regular session annually before March 1st."

Mr. Cate.

**DELEGATE CATE:** Mr. Chairman. In order to expedite the process, I would withdraw my amendment. I would ask, however, this committee to support the hard work of the Legislative Committee. We worked awful hard. We compromised. We compromised everywhere on this thing. Both sides gave and this is what we came up with. And I like to compare the committee to a cream separator where you put all the cow's milk in and the cream comes out on top. And that's what we did. We put the cow's milk in from 14 different sources and took the cream off the top. That's what we recommended to you and I ask your support for that. I think that annual sessions is the most important thing that we can do in this Legislative article and I want you to know that I intend to vote for Mr. Furlong's amendment to limit it to 60 days annually, but I ask you to keep the annual sessions. Thank you.

**CHAIRMAN GRAYBILL:** I understand Mr. Cate to have withdrawn his motion. Mr. Nutting, is the motion—the substitute motion of Mr. Nutting, which is the minority report on page 57, is now before you.

Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman. As the junior member of Benito and Adolf why (Laughter), I presume I'm the junior member; I look more like Benito than I do like Adolf (Laughter) but, anyway, I think we've now reached the crux of the matter so let's get the vote on it. Thank you.

**CHAIRMAN GRAYBILL:** All right. The issue is on Mr. Nutting's substitute motion that the minority report on page 57, be substituted for Section 6 of the Legislative bicameral article in place of Section 6 as it appears on page 33 for example. The majority Legislative proposal is an annual session, at the moment with 90 days, with Mr. Furlong's motion pending. The minority position on page 57 says, "following the general election, the legislature shall meet in regular session before March 1st or earlier as provided by law. The regular session shall not exceed 80 legislative days. Any business, bills or resolution pending at adjournment of the session shall carry over with the same status to any future special session during the biennium. Special sessions not to exceed 30 days may be convened by the governor or by a majority vote of the membership of each House. Regular and special sessions may be extended by a majority vote of each House." Does everyone understand the proposition? Mrs. Robinson, for what purpose do you rise?

**DELEGATE ROBINSON:** May we have a roll call on this? (Seconds rise)

**CHAIRMAN GRAYBILL:** We'll have a roll call vote. All those in favor of the minority proposal in place of the majority proposal, please vote Aye. All opposed, please vote No. Have all the delegates voted? Does any delegate wish to change his vote? Will you please record the roll call.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Absent |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Absent |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |

| | |
|---|---|
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Absent |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Aye |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Absent |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Chairman Graybill | Nay |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Absent |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 35 delegates voting Aye; 60 voting No.

**CHAIRMAN GRAYBILL:** 60 delegates having voted No and only 35 Aye, the motion of Mr. Nutting, the substitute motion, is defeated. The issue is now Mr. Furlong's motion to amend on page 33 for one place, Section 6 of the bicameral article, by changing in line 9 the number "90" to "60".

Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, fellow delegates. There's an old New England joke that has the tag line that you can't get there from here; and in the last 2 hours, I've kind of wondered how I got from there to here. I would like to say for the group that I have no feelings one way or the other about the majority or the minority. My motion had nothing to do with it. I want the 60-day limit in either case. I will let the rest of you fight out the uni versus bicameral proposal. I would like to reiterate that I am not trying to cut the sessions. I'm only changing the procedure. I think it gives a responsibility to the Legislature to convince the people that took up and used more time. I would appreciate your support. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Furlong. I think the Chair incorrectly stated Mr. Furlong's motion a moment ago. His motion was to reconsider Section 6 in both the bicameral and unicameral side and that's what we did. And I have it marked in both sides. So, it's also on page 4 in Section 6 of the unicameral section. So, both the unicameral and bicameral are now at 90 and Mr. Furlong proposes that they both go to 60.

Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, I meant to ask for a roll call vote. May I?

**CHAIRMAN GRAYBILL:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** Has he closed, Mr. Chairman? I just am unclear on that one.

**CHAIRMAN GRAYBILL:** I think he's closed but I want you—I—

**DELEGATE BURKHARDT:** Could I—no—no.

**CHAIRMAN GRAYBILL:** —certainly don't want to cut off any amendments or debate if somebody doesn't like them both.

**DELEGATE BURKHARDT:** Well perhaps just as an—explaining a vote, I don't consider my vote in favor of this to be a wild-eyed kind of leap into the blue. It seems to me that a group that met 106 days last year is simply thinking about maybe meeting 120 in the next couple of years.

**CHAIRMAN GRAYBILL:** Very well. So many as shall be in favor of Mr. Furlong's motion, vote Aye on the voting machines. So many as shall be opposed, vote No. Have all the delegates voted? Does any delegate wish to change his vote? Please take the roll call.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Absent |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Absent |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Absent |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Chairman Graybill | Nay |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |

| | |
|---|---|
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 91 delegates voting Aye, 5 voting No.

**CHAIRMAN GRAYBILL:** 91 delegates having voted Aye and 5 having voted No, the motion to change it from "90" to "60" passes. Very well. We have another proposal to reconsider a section. Mr. McKeon, are you or Mr. Heliker handling that?

**DELEGATE McKEON:** (Inaudible) . . . I think we'll probably both handle it. Mr. Chairman, having voted on the prevailing side I move that we reconsider Section 16. Mr. Chairman. I—

**CHAIRMAN GRAYBILL:** May we have the clerk read your proposal?

**DELEGATE McKEON:** Please, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Oh, this is just a motion. I beg your pardon; we don't need to do that now. Go ahead.

**DELEGATE McKEON:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McKeon.

**DELEGATE McKEON:** A couple days ago, I voted against the peoples' advocate proposal. I did so because I felt that the proposal as it was submitted to this body gave this side—peoples' advocate—plenary powers. I have since met with the Delegate Heliker and others, and we have amended the proposal and have copied the North Dakota proposal concerning the peoples' advocate. We have eliminated the subpoena power and granted the Legislature much more control over the peoples' advocate. One thing, Mr. Chairman, I failed to realize at the time I voted against the peoples' advocate, was that we are not all in this state blessed with the knowledge that the people in this body would have of state government. Many here are well versed in the ins and outs of state government but there are so many, Mr. Chairman, who don't know where to go when they have a grievance. And, for this reason, Mr. Chairman, I think that a peoples' advocate is an excellent addition to the function of state government. I think that inevitable centralization of government has led to a Kafka-like labyrinth and I think that the peoples' advocate will go very far to eliminating much of the red tape which the bureaucracy has created. For this reason, Mr. Chairman, I urge this body to accept and move affirmably on my motion to reconsider so we can, again, raise the issue of the peoples' advocate on the floor of this Convention. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** The issue is on Mr. McKeon's motion to reconsider Section 16. In both the—Section 16 is the same for both bicameral and unicameral.

Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, I, too, am a little tired of all of the discussion that goes on in these matters, both to get a matter reconsidered, and then for the question on the merits of the proposed amendment to save what has been killed. And so on behalf of those who resist this motion and who are not in favor of a peoples' advocate, I suggest that we simply remain silent and vote No on this motion. If it should prevail, then let us debate it.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I rise in support of Mr. McKeon's motion. I think that there are a number of things that were not brought out the other day and after time for reconsidering—thinking it over, I'm sure there are many people in this chamber that are interested in rediscussing it. I don't think that, at any time, if we feel that we have enough interest in a subject that we should simply remain silent on it and pass it over. And I call for a roll call vote.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman. If the evil that we're trying to correct by making another bureau in state government is the fact that state government has become too cumbersome and too bureaucratic, may I suggest to you that the remedy perhaps lies in adding another section to the Constitution requiring that Legislature to make the state government less bureaucratic, and do away with a lot of the bureaucracy concerning which we apparently are complaining, and which justifies the addition of yet another bureau on top of everything that we have. I'm opposed to the motion to reconsider.

**CHAIRMAN GRAYBILL:** Mr. McKeon.

**DELEGATE McKEON:** Mr. Chairman. If Mr. Aronow's comments were in the form of a motion, I support them. I think that what he's saying is that—he's raising a very sore issue in the state and in all the states and in federal government too, that we've just become extremely centralized and naturally extremely cumbersome. I'm afraid we can't eliminate that unless we reverse everything we've done probably since the New Deal, and I'm not attempting to do that by any means. However, I think that the peoples' advocate will allow the uneducated and the poor to somehow cut through the red tape and more quickly find their remedy. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman. I voted initially in favor of the peoples' advocate. I stand now in opposition to the motion to reconsider. We have approximately 1,000 peoples' advocates in the State of Montana at the present time. They're all members of the Montana bar, members of the legal profession. We also have peoples' advocates under the OEO program. We also have peoples' advocates that run for the Legislature. We also have peoples' advocates in every elective office in the State of Montana. I've had time to reconsider my vote. I have read and reread the proposal with respect to a peoples' advocate and I fail to visualize how it could have any real, salutary, healthy effect for the citizens of the State of Montana. The peoples' advocate does not have any particular power. It does not chart for him any guideline by which he may take the complaint of the citizen and put it into some type of effective channel so that some particular result will be reached. It provides that the peoples' advocate is a legislative preacher. He is to represent the Legislature. I submit, if ever—it is true—that we are dealing with a legislative matter, this is it. If the Legislature thinks that they ought to have a peoples' complaint department, let them decide it, let them construct it. And I oppose the motion to reconsider.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman. As an experienced peoples' advocate over the past 40-odd years, I object to this motion of Mr. Murray's to cut off debate. I think this is a matter that deserves reconsideration and I support the motion of Mr. McKeon to reconsider. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman. I rise to support the motion to reconsider by Mr. McKeon. Former President Harry Truman once said that he felt that he was the peoples' lobbyist. He felt that many corporations and other best interest groups spent millions of dollars every year to lobby the Legislatures throughout the country, and he felt that he was the only one that actually was considering the people other than the Legislatures themselves, but he felt that he was the peoples' lobbyist. I feel that the people need more support and I feel the peoples' advocate fills this bill. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President. I, too, rise in opposition to this motion, and I would simply like to point out a couple of facts. In the first place, we have a County Attorney's office in every county in the state and this office has long been notorious for handling complaints of just this nature. Any of the members here who've ever worked in such an office know that there's a steady stream of people coming into this office daily asking questions about state government and where to go find the answer. Many, many times—most of the time, I should say—the County Attorney, as a matter of service, figures it out for him and if he can't find out the answer, he finds someone that can. I should also like to point out that when we go to the single member legislative district, there will be one legislator serving a relatively small area and this legislator, hopefully, will be meeting annually. He will be in a position to serve a relatively small body of people to handle their inquiries. And finally, what's the matter with the Governor's office? Is he not the Chief Executive? Isn't this part of his duty to keep his constituents informed? I submit that it is. And if perhaps the people who want a peoples' advocate system, perhaps some arm of the executive in his office might be established—a secretary, perhaps. One final point. By going from semiannual to annual sessions, according to my rough estimates, we have increased the cost of the legislative body alone without considering stenographic help, et cetera, by some $250,000. This is not a small amount of money. It's the kind of money that would be rather hard to find in the Legislature when they get into the problem of figuring out the budget. It was established here the other day that a peoples' advocate would cost in the neighborhood of $100,000 per year. So, we can see that the cost of this would not be inconsiderable and I think in view of the light of what we've done here, making annual sessions, a district system, that we've accomplished the job pretty well.

**CHAIRMAN GRAYBILL:** Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman. I support the motion to recommit and I support the doctrine or the idea of a peoples'—I'm sorry, not recommit, to reconsider—and I support the peoples' advocate. It seems to me that regardless of what we do here, government is going to remain large or maybe larger, complex and impersonal; and it's this impersonal part of the government that bothers me. I think of the peoples' advocate as being one of the people. I'm not concerned about their problem. In answer to Mr. Dahood, I understand and recognize that we have advocates in the form of lawyers. Sometimes the people never get to them because they just don't know how, they don't know what their rights are. I want the peoples' advocate to be of the people and for the people and I certainly urge the reconsideration and the support of the idea.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. President. I join with Delegate Dahood with this addition that the best peoples' advocate and the best way of presentation is the press of Montana, and the letters to the editor column are as good an advocate as anything that you can buy.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. President, I know that the rules say that you only have the privilege of speaking once on a subject, but if the argument of Mr. Swanberg is going to be sustained, I have a very short statement that I'd like to read.

**CHAIRMAN GRAYBILL:** Mr. Scanlin You can speak twice on a subject in the Committee of the Whole, as has become apparent the last few days. (Laughter)

**DELEGATE SCANLIN:** Would the Chair allow me?

**CHAIRMAN GRAYBILL:** Go ahead, speak up.

**DELEGATE SCANLIN:** Thank you. I rise to speak in behalf of those who are unable to speak for themselves. Government in a democracy is supposed to be the servant of all the people, not just the educated, the people that read the newspapers, the higher income, or the sophisticated. We are here to create a foundation for this type of responsive, democratic government. In our increasingly complex society, many difficulties could be alleviated merely by providing readily available communication between government agencies and the citizenry. To me, creating a peoples' advocate is directly in line with this goal. We will be providing a simple way in which every person in Montana can insure that his government is serving him fairly and judiciously. We would not be creating just another bureaucracy. To quote a statement from Sweden, "I believe that by creating a peoples' advocate, we would be expressing a democracy for all the people, not just the privileged." It is true that there is the Legislature and the courts to handle complaints. A peoples' advocate would not replace these. He would, rather, supplement them with the objectivity a legislator cannot have as an elected official and at a price the judicial system cannot match. In line with this reasoning, I agree with one supporter who has said, "It doesn't make any sense to spend $500 to win something you should've had for nothing in the first place." A peoples' advocate would be able to make preliminary examination of this citizen's complaint and perhaps the problem could be solved, or at least greatly alleviated, by a clear display and disclosure of the decisions and actions taken by each side. To insure the individual always has easy access to government, I feel it is necessary and desirable for Montana to have such an advocate. It seems to me that when we talk about one or two hundred thousand dollars, that an intelligent telephone operator could handle the duties of this office. And I speak from experience of 2 days out there on the switchboard handling citizens' questions relative to the conduct of this Convention. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman. I don't like to take a lot of time on this Convention floor and I don't believe that I do, but this certainly disturbs me. It seemed like there's many, many people here that don't have any idea of where this money is going to come from. They just want to keep voting in more expenses, more costs, annual sessions, longer sessions, anything we can do to spend more money. Now, this has been advocated that we would probably spend one to two hundred thousand dollars and this is supposed to be a small amount. It was said the other day that the Legislature, the cost of it was so minimal that we shouldn't worry about spending a little more. But I worry about this and I'll tell you why. We haven't been able to finance our school foundation program now for several years, adequately. We can't finance our Boulder school. We can't finance Warm Springs. We just can't pay these people enough to live on over there. Now, if we can't do that, how in the world are we going to keep creating new offices, constitutional offices and even at a cost they say of 100,000, 200,000, this would pay for one office in the city of Helena. Now, how are these people down in the eastern end of the state, way over in the western end of the state, how are they going to know about this office in Helena? So, you're going to have to have branch offices—all of the towns—you'll probably wind up with 15 or 20 of them. You must have qualified people. Otherwise, you're not going to do what you're wanting to do. So, this cost of 100 or 200,000 is simply going to be wasted if that's all you're going to spend because you're not going to reach these people. I certainly can sympathize with Delegate Scanlin. He wants to do something for these people; he's worked in it and he knows there's a need; but you're not going to arrive at this answer just by creating another layer of bureaucracy in Montana, even if you had the money. And I submit to you that you certainly do not have the money to be going off in all directions spending for this, spending for that just because each one isn't very much to add to the whole burden. I thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce, would you like to speak?

**DELEGATE JOYCE:** Yes, I would, Mr. Chairman. I would like to try and bring the Convention—the thinking maybe—back to what we all claim is fundamental. The peoples' advocate may be a great idea. The place to decide that is in the Legislature. If you can get it through the Legislature, try it, if it's good, keep it going; if you can't get it, if you try it and you don't like it, you can change it. But why write into the Constitution a new office? We're dealing with constitutional principles. This section is clearly a statutory matter. It has no place in the Constitution. All the arguments in favor of it can be made to the Legislature. Then they can argue money and everything else but, even as written, it doesn't mean a thing. If we put it in the Constitution, the next session of the Legislature can very effectively destroy the job by just not funding it, so why fight all these battles here today? We're not legislators. We didn't come up here to legislate. Let's let all the legislation pend for the future. Fight all those battles another day. Let's just write fundamentals into the Constitution. Therefore, if we stay here all day, I'm going to vote against putting the peoples' advocate in the Constitution, not because I'm against the people but simply because it's not a constitutional question. If I lose, I lose; I don't care because even if you put it in, it doesn't mean anything. The Legislature is still going to be able to control it by not funding it, so let's not put legislation into the Constitution; let's not win everything for the people today; let's just afford the opportunity for the people to win another day. That's what we're doing. Let's write a fundamental Constitution. Let's let us fight all of our other battles of taxation and right to work and social security and peoples' advocate and sales tax and income tax, let's let the people fight that another day. Let's just write a Constitution. Keep all the legislative matter out of the Constitution and let's give a system where the battles can be fought fairly another day. But let's not put the peoples' advocate into the Constitution because it doesn't mean anything even as it's written, and so let's just keep it out of the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Would you yield to a question?

**DELEGATE JOYCE:** (Inaudible)...will.

**DELEGATE CATE:** You're Chairman of the Executive Committee proposal, are you not?

**DELEGATE JOYCE:** Yes.

**DELEGATE CATE:** I find in here provisions for the Secretary of State, Attorney General and Superintendent of Public Instruction. Why write them into the Constitution?

**DELEGATE JOYCE:** Well, we can debate that. I'll tell you why when we come to it. The reason for writing them in is because the Attorney General has been an elected official. The majority of the opinion feel that the Legislature should be restricted that they shouldn't be able to abolish that office. The Secretary of State has been an elected official. We're always going to have a Secretary of State, it's necessary in government. The majority believe that he should be retained. As to the Superintendent of Public Instruction, we're always going to need someone to run education in Montana. The majority is giving the option of making that office elected or selected. We are therefore limiting the Legislature in abolishing the Attorney General and the Secretary of State. That's a constitutional issue but we are not creating any new offices in the executive office. That doesn't mean that the Legislature can't elect 2,000 people in the future if they want to. We're affording the opportunity that they can do that. So, my answer to your question is, that's why we put those in the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Joyce yield to a further question?

**DELEGATE JOYCE:** Yes.

**DELEGATE CATE:** Would not you agree that the Secretary of State, Attorney General and Superintendent of Public Instruction could also be taken care of by statutory law?

**DELEGATE JOYCE:** Yes, they could.

**DELEGATE CATE:** And that they do not have to be written into the Constitution?

**DELEGATE JOYCE:** That's right.

**DELEGATE CATE:** Thank you

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** May I ask what will we do if we decide not to reconsider? No, I mean we're reconsidering it. Now, I think Mr. Murray had a perfectly sensible idea that once a person has risen to ask to reconsider and has given his reasons for reconsideration, then let's vote on whether or not we ought to reconsider. And if we vote not to reconsider, then we don't have to do all the reconsideration that's now being done previous to the motion passing to reconsider. And I'm just rising to express a little sympathy for you, Mr. Chairman. In this kind of process, I don't think we're being fair. I think we all understand once what the issue is, that we should vote whether to reconsider or not.

**CHAIRMAN GRAYBILL:** I think your point is very well taken. The Chair is not, however, going to cut off debate. So, if you people insist on debating it before, that's fine. You're going to sit here with me. Or, in fact, you're going to sit longer than I am today.

Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. President, fellow delegates. When I first rose here to give my support to Mr. McKeon's proposal, I felt like Mr. Harper felt and that is that we were just simply going to hear from this gentleman and we're going to vote on it or not. But, since many people have come up and decided to throw their input in, I'd like to throw mine in at this point, if I may. Now, some of you, I'm sure, feel that this is too advanced an idea. And I think this is part of the problem. But I have to remind you, I think, that we're writing a Constitution that's going to last at least 20 years or perhaps longer. Now, North Dakota, if you look at the new Constitution, has provided for an ombudsman. We even canned that idea yesterday—or the other day because we thought the people of the state wouldn't understand what it is. Maybe they have more Swedes over there so they would understand it but I don't know. Anyway, if you look at Article XI, Section 4 in the new North Dakota Constitution, they have an ombudsman or a peoples' advocate. Mr. Aronow and Mr. Dahood mentioned something about the OEO. Now, I talked to Mr. Aronow about this and he says there is one in Kalispell. I've never heard of the man. I think the less-knowledgeable in terms of government and law in the city of Kalispell perhaps would know even less about it. Now if we get a peoples' advocate in the statehouse, that person will be focused as I see it. All will know where he is and where to find him. Now, what about the OEO? I understand, first of all, that this federal office is about to go defunct for lack of funds. The legal aid part of it, the one we're specifically referring to, has come under continual attack and nearly lost its funding the last time around. These legal sources, also under OEO, are funded with the idea that states and localities eventually will fund them themself. Now, OEO thinks so much about the ombudsman program that they've funded two of them themselves, one in Iowa and one in Nebraska, both of which are still in operation. The University of California at Santa Barbara has a program to evaluate the ombudsman program throughout the United States. The director of this program, a Mr. Stanley Anderson, has categorically stated with minor exceptions, they work. They are successful in forcing the government to act in the citizens' behalf mainly due to their ability to publicize omissions or acts that it deemed improper. Let's take up this business about cost. Where have we ever substantiated that this office is going to cost 100,000 or 200,000. I don't see any facts or haven't seen any presented to substantiate that. Last year, the city of Seattle and King County have adopted the peoples' advocate program and it's working—it's in operation. Someone said a person would have to come to Helena to see this person or else would have to have one in every city and town. I think that's not true. I think that they can write a letter or call. And in most of the instances of the ombudsman program, 80 to 90 percent of the complaints have been taken care of simply by telephone or letters. This is from the Santa Barbara study. Now, this does not mean though, that the local lawyers, the local legislators or the Mr. Scanlins or the Mr. Champouxs that have been peoples' advocates all of our lives, are not going to continue in this position. Now a lot of proposals are going to be accepted here, but I feel this is one of the little peoples' proposals. This is the little guy. This is for the little guy, the guy that can't afford a lawyer, is afraid to approach a lawyer and doesn't know about the OEO. This will be one of the things that will help to sell this Constitution to those little guys out there, many of whom are bigger than I am physically. He won't read this Constitution, but he will grab a hold of the idea that there's someone in there, someone at the statehouse that he can always get on the phone or write to and they'll listen to him. Many of you said you favored the idea but voted against it with the idea that the Legislature will implement it. This will not happen and hasn't happened. This is an idea whose time has come in North Dakota. I submit that the people of Montana are no less intelligent progressive. I urge that you support the motion to reconsider and I urge that you support the unanimous recommendation of the Legislative Committee. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, fellow delegates. Obviously, this has become a debate of the peoples' advocate and I don't think I need to reiterate the speech I gave yesterday concerning the way I feel about the need for peoples' advocate. But I do want to make a few fairly brief points. This will probably be one of the very few times that I will disagree with my esteemed committee Chairman, Delegate Dahood, but I do appeal to his first consideration when he supported the peoples' advocate rather than his second when he opposed the peoples' advocate. I feel that this is a constitutional consideration for one very basic reason, and that is it cuts across all three branches of government. It cuts across the Executive, the Judicial and the Legislative. And I submit that the Legislature is not in a position to cut across the Executive and Judicial branches. And this is why there needs to be something in the Constitution concerning the peoples' advocate if you're going to have it at all. The intent of the proposal is not to provide simply an arm for the Legislature. It's to provide a arm to the people that cuts across all branches of government so that they can get information; they can get answers to questions that they have directly and not have to go through another branch, through the political structure or through any intermediary source. And to Mr. Martin's comment, I suggest that the press, the news media is the primary mechanism by which the peoples' advocate functions. The individual citizen approaches the peoples' advocate. Where the peoples' advocate finds that there is a problem, he then elicits the consciousness of the state through the news media to bring about some action because the peoples' advocate, in and of himself, has absolutely no power. His power comes through the news media focusing attention on a problem. And I submit that the peoples' advocate function is, in most instances, to alleviate problems simply by bringing attention to them so that they can be solved promptly. I feel very strongly about this proposal. The thing that captured the most attention in the time that I was in central Montana was the concept of the people having someone that they could go to with their problems directly, not having to go through political structure, not having to go through legislative structure, not having to go through a lawyer if you will. This will not take away the need for the other elements of investigation that we have, but it will provide confidence in government and it will provide a place where the people of Montana can turn in times of trouble. Thank you, Mr. Chairman, fellow delegates.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. I just wanted to say what Mr. McKeon has already pointed out, and that is that if the committee votes for reconsideration, that they will have before them a substitute motion which I've prepared which is based upon the North Dakota proposal. It does not copy it exactly. I think it will answer satisfactorily most of the objections that were raised to the committee's proposal the other day when we debated this, and I voted for that proposal; and afterwards, I had considerable doubts about the wisdom of certain of the ambiguous language in it. I think that the proposal that I have drafted will take care of most of those legitimate objections.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** I rise in support of Mr. McKeon's motion to reconsider. I do have some valid arguments in favor of the peoples' advocate, but I'm not going to express them at this point, in hopes that the reconsideration motion does pass, and that I would have an opportunity after it does pass, to put them forth at that time.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman. I was going to remain silent and follow Delegate Murray's advice which, contrary to Delegate Scanlin's advice, I did not construe to be an attempt to limit debate, but rather an expression of the futility of continual reconsideration. This morning, we spent an hour and 40 minutes redebating the minority proposal on the bicameral structure, which was killed 35 to 60, which was precisely the same vote that it was killed by a couple of days ago. However, I do want, because the vote on reconsideration on this peoples' advocate will undoubtedly be the determination of the outcome of this proposal, I want the journal to reflect my reason for opposing it. It is precisely the reason which Delegate Foster is advocating the peoples' advocate for, a position that can cut across all three branches of our government. I submit that this is a fundamental violation of our American democratic form of government, which is based upon completely separate and distinct Executive, Legislative and Judicial powers. I have examined a copy of the proposed amendment. It gives the peoples' advocate the power to investigate, which is an executive function. It gives them the opportunity to determine whether the complaints are justified, which means that this peoples' advocate is going to sit as the judge and jury and to offer recommendations, which is a legislative function. The scoreboard and I'm sure the press, will record my vote as a vote against the people. This is not true. I am trying to preserve our fundamental form of government. I will oppose any proposal introduced into this Convention which violates that principle. And as an addition, I would like to add that the proposed powers to be given to this one peoples' advocate exceed those given to the Governor of the State of Montana, the Chief Justice of our Supreme Court and whomever the leadership of our Legislative branch of government should be. And that is fundamentally wrong and I oppose it.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Yes, I'm, tired too, Mr. Chairman, and I hate to rise again but there are a couple of points. One, the Montana Legislature has submitted to it an ombudsman. What did the Montana Legislature do to it? What did Mrs. Reichert say yesterday? She said they killed it. I don't know how many people were listening to her. Now, the OEO lawyer takes care of the guy that's only making 4,000 bucks a year and has 20 kids. The wealthy ranchers—I'm not worried about them. They're taking care of themselves; they've shown their ability to take care of themselves on the floor of this chamber. But, what about—they can hire a lawyer. And I'm a country lawyer. I'm way out in west Billings. I'm the poor class lawyer. I only charge $30 an hour. The boys downtown charge 40 and 50. And another thing that I didn't mention to you, Tuesday I told you about the school teacher in Alberta that the ombudsman got his retirement pay back to him without an attorney fee. For the benefit of the nonlawyers, I'll tell you what the fee schedule is on contingent claims. Through the Administrative Board—say this man got $6,000 back plus the interest—the lawyer, through the Administrative Board would have gotten a third. He would have gotten $2,000 and he would've taken a third of the interest, whatever it was, assuming that he had a recovery of $6,000. That's just the beginning. Let's say it's appealed. (Inaudible)...in Montana, it would be appealed, say to the District Court. The fee goes up to 40 percent. Then let's say that it's appealed across the hall here to the Supreme Court of Montana, the fee goes up to 50 percent. Now, whatever's left over—and then you take the court costs, of course, out of that, and the attorney's out-of-pocket expenses. As far as I'm concerned, to kill this ombudsman bill—it would be great for my profession. As far as costing $100,000 or 200,000 of funded, we agreed in the original proposal anyway would be the salary of a district judge, of which I believe is about 20,500—the latest raise or 19, but anyway, about 20,500. In Alberta, they have four people so let's say this man has three secretaries. Now, they must be paying secretaries in Helena a heck of a lot more money then we are down in Billings to get up to $100,000. And all he needs is a little hole in the wall, and a telephone, and a desk and a chair and this long distance collect WATS line, or whatever we call it. That's all he needs. And if you figure $15,000 for secretaries, that's 5,000 a year per girl and $20,000, I come up with $35,500, and plus the cost of the telephone and the gas and light. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Brazier.

**DELEGATE BRAZIER:** Mr. Chairman. I had hoped to save my observations to a more cogent time. But Mr. Kelleher's remarks underscore what is concerning me. Now, assuming that this ombudsman is going to pass in North Dakota and assuming that he's going to get relief, what we're being asked to do here is to overrule the Montana Legislature. We're being asked to be a super Legislature, and I submit to you that that is the quickest way to defeat our constitutional effort. Every legislator has had a lot of time to consider these issues. His votes reflect, in some way, how public opinion lies on the issues and certainly he's going to take offense if he thinks he's got a bunch of hot shots up here just trying to make him look silly. I strenuously urge you to reconsider what you're doing. The Legislature has had this issue before it before, which proves that it's a legislative-type issue, which proves it should not be in the Constitution, and your defeat of Mr. McKeon's motion will in no way jeopardize the right or privilege of any person to bring this issue up at a more favorable time before the Montana Legislature. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Heliker, did you want to speak?

**DELEGATE HELIKER:** Well, I just wanted to say, Mr. Chairman, that I've been avoiding discussing my particular proposal, but Mr. McNeil has now taken upon himself to do so. Now, not all of the delegates have this before them and I wonder if it might not be since, in my opinion, his statements concerning it were erroneous, it might not be in order at this time to read it.

**CHAIRMAN GRAYBILL:** No, the Chair is not going to read it until we've had the motion. Now, when you're all through, then the Chair will make a statement.

Mr. Champoux. You want to be next?

**DELEGATE CHAMPOUX:** I'd like to take up two points if I may. In the North Dakota section that we haven't had before as yet, they were going to propose that Mr. McNeil referred to, and I would like to direct a question to Mr. McNeil if I may please.

**CHAIRMAN GRAYBILL:** Does the question concern whether or not we should have a motion to reconsider?

**DELEGATE CHAMPOUX:** The question concerns remarks that he made.

**CHAIRMAN GRAYBILL:** Then I will rule it out of order.

**DELEGATE CHAMPOUX:** All right. In reference, then, to Mr. Brazier's comments. If we're to take that line of reasoning, then are we—also the Legislature's had 60-day sessions, annual sessions, before them. We just passed that this morning. Or do we say then that this Convention was in opposition to that point that the Legislature also refused to do?

**CHAIRMAN GRAYBILL:** Mr. McKeon.

**DELEGATE McKEON:** Mr. Chairman, may I close?

**CHAIRMAN GRAYBILL:** You want to close?

**DELEGATE McKEON:** Mr. Chairman, I think that we probably got off the track, and the vote on reconsideration I'm certain will be a vote on the merits of the question of whether or not we should have a peoples' advocate. So, in conclusion, I would like to answer a few of the remarks made. Mr. Martin made the statement that the newspapers are the peoples' advocate and certainly, Mr. Chairman, the newspapers are the peoples' advocate; but unfortunately, they only handle the big questions. Our peoples' advocate will handle the little questions. He will handle the problems that aren't spectacular and aren't covered on the front pages. I think this is important. Mr. Chairman, the city of Butte within the last year, has hired a consumer protector; and it might be indicative to note that the people from the city of Butte have been the ones most adamant in their request for a peoples' advocate. They are certainly pleased with the job the consumer protector has done in the city of Butte. Also, Mr. Chairman, I think the peoples' advocate will free the other arms of state government to handle the jobs that they have been delegated to do by statute. In conclusion, M Chairman, I would say that the peoples' advocate is a fundamental question and does deserve constitutional recognition. Thank you, Mr. Chairman. (Inaudible)...I call for seconds?

**CHAIRMAN GRAYBILL:** Just a minute, Mr. Clerk, will you sit down? Ladies and gentlemen, the Chair would like to make a statement at this time. This issue is on a motion for reconsideration. The issue is not a substantive issue. Now, I have let you go on because it is obvious that once one of you undisciplines yourself enough to get deeply into the issue, it becomes impossible for the other side to cease or stop fighting back the issue, because then you begin to cloud the issue of whether or not there should be reconsideration. Now, it should also be obvious that on any motion which has as much sentiment on it as this, we should simply find out if there's 51 percent want to reconsider it and then if there is, we should let them have their day in court. But because of the way some of you proceeded in debate, and I must point out that it is only some of you, because quite obviously all of you haven't spoken, and many of you have disciplined yourselves, but these things are going to happen again and again. Now, the Chair has, up until this point, tried very hard to let everyone have as much debate as he can. I don't like to hammer you down and to insist that you be relevant to every point. I like to give you quite a bit of leeway, but I think it's obvious by now that the Chair is going to end up asking the Rules Committee for some serious restrictions on all debate in this chamber unless we discipline ourselves. This has been a good example of an undisciplined body continually debating something that is not yet relevant. The relevant point here is whether or not these people should be given a hearing this morning. Now, the Chair has not spoken on it. Before you vote, you should know that if the vote to reconsider passes, the Chair intends to relinquish the Chair and I will speak on the issue. All those in favor, please vote Aye, and opposed No. All the delegates have not voted. The motion is whether or not to reconsider Section 16.

Mrs. Babcock.

**DELEGATE BABCOCK:** May I explain my vote?

**CHAIRMAN GRAYBILL:** You may explain your vote.

**DELEGATE BABCOCK:** I'd like it in the journal that I'm voting because I believe we have a right to reconsider, but I think it should be done after the 51 percent is taken.

**CHAIRMAN GRAYBILL:** Very well. Has every delegate voted? Does any delegate wish to change his vote? The Chair will close the vote.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Nay |
| Artz | Aye |
| Ask | Nay |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |

| | |
|---|---|
| Campbell | Absent |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Absent |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Chairman Graybill | Aye |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Nay |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Nay |

**CHAIRMAN GRAYBILL:** Will you please announce the vote?

**CLERK HANSON:** Mr. Chairman, 48 delegates voting Aye; 48 voting No.

**CHAIRMAN GRAYBILL:** 48 having voted Aye, 48 having voted No, the proponents of reconsidering Section 16 will not now be given a chance to have it reconsidered. Very well. The Chair will call on Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. I move the Committee of the Whole rise in final report and refer Legislative proposal to Style and Drafting.

**CHAIRMAN GRAYBILL:** The motion is for the committee to rise and report finally the Legislative article to Style and Drafting. All in favor of the motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, so ordered.

**PRESIDENT GRAYBILL:** We will remain in session and take the report. Convention will be in session. Before we read the committee report, the Chair will suggest that we read only today's committee report. We have read and adopted the others individually, but since this is the end of the Legislative article, if anyone objects, we will read the entire report. Does anyone so object? Very well, Mr. Clerk, please read today's report only.

**CLERK HANSON:** "February 24, 1972. Mr. President, we your Committee of the Whole, having had under consideration report Number 3 of the Committee on Legislative, recommend as follows: Delegate Furlong having voted on the prevailing side in adopting Section 6 of the Legislative proposal on General Orders moved that Section 6 be reconsidered, motion carried; that Delegate Nutting's motion to adopt the minority proposal for Section 6 be not adopted; roll call vote was requested by Robinson and with sufficient seconds the following vote was recorded, Ayes 35, Noes 60; that the following amendment to Section 6 by Delegate Furlong be adopted in both bicameral and unicameral proposals amended by striking the figure '90', and inserting in lieu thereof the figure '60', in line 6, page 4 of the unicameral proposal and line 9, page 33 of the bicameral proposal; roll call vote was requested by Delegate Furlong with sufficient seconds and the following vote was recorded, Ayes 91, Noes 5; that the motion to reconsider Section 16 of the Legislative proposal failed; roll call vote was requested by Delegate Champoux with sufficient seconds and the following vote recorded, Ayes 48, Noes 48; that the committee rise and finally report and the Legislative report be referred to Style and Drafting. Signed, Leo Graybill, Chairman."

**DELEGATE FELT:** Mr. Chairman.

**PRESIDENT GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** I am not objecting to this procedure but there was a question raised yesterday, and the Chair seemed to express some doubt himself as to the very first motion that was acted upon when we entered Committee of the Whole several days ago on this Legislative article. I believe that the Chair had it entirely correct but if there is any question, I wondered if the Chair might have that one original motion read so we'd be certain on that.

**PRESIDENT GRAYBILL:** The original motion was—well, I'll read you the first two paragraphs. Delegate Aasheim as Chairman of the Legislative Committee noted minor corrections in his committee report. I should also start by saying, "We, your Committee of the Whole, having had under consideration report Number 3 of the Committee on the Legislature, recommend as follows", which means we did it. Number 2 paragraph is that the bicameral and unicameral proposals be sent to Style and Drafting as a dual proposal for recommendation to the voters. Very well. You've heard the report of the Committee of the Whole.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President, I move the adoption of the Committee of the Whole report.

**PRESIDENT GRAYBILL:** The motion is to adopt the Committee of the Whole report on the Legislative article. So many as are in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**PRESIDENT GRAYBILL:** The Ayes have it and so ordered. Without objection, the Chair will go off of Order of Business Number 10 to Order of Business Number 11.

Mr. Martin.

**DELEGATE MARTIN:** For those of the delegates who send the press release to the weekly newspapers, I would hope that before you mail them, you would correct an error in—which is called to my attention by Delegate Artz. We say in that release, the poll booth registration allowing citizens to (Inaudible)...register up to and including the day of election was defeated by a vote of 49 to 51. The poll booth registration was left optional with the Legislature and that should be corrected. And if anybody has plans to send those out, if they'll go to the public information office, why, we'll correct it. Thank you.

**PRESIDENT GRAYBILL:** Very well. The Chair also wishes to announce that payroll checks for the attaches and staff are ready. Mr. Eskildsen, wait a minute. Mr. Furlong, for what purpose do you rise?

**DELEGATE FURLONG:** A point of information, Mr. Chairman.

**PRESIDENT GRAYBILL:** Yes, sir?

**DELEGATE FURLONG:** I'm somewhat concerned about our action of just adopting the Committee of the Whole report and I have a question or two that I'd like to address to someone, anyone for help. Will this Committee of the Whole or will this assembly be given the chance or option at some later time to actually cast a ballot either in favor of or against the unicameral or bicameral proposals? I'd like to know if that's right and, if so, when that would be proper.

**PRESIDENT GRAYBILL:** Very well. For the purpose of the journal, let's go back on Order of Business Number 10 without objection.

(Committee of the Whole)

**CHAIRMAN GRAYBILL:** First of all, I don't know whether I said it or not, but the committee report that we adopted is hereby referred to Style and Drafting. Now, it goes to Style and Drafting. Style and Drafting will work it over as they have the one you received this morning concerning the text of both the bicameral and unicameral proposals. Eventually, we'll get it back from Style and Drafting in this form. Style and Drafting actually has a 13-step process that this goes through in terms—that each piece goes through—and one of those steps later on, Mr. Furlong, is for Style and Drafting to propose to this body in one of its reports, a ballot. Since Style and Drafting has been given both a bicameral and a unicameral proposal, which are obviously inconsistent, Style and Drafting must devise a way on the ballot to overcome that. The presumption is that they will come up with an alternative form of voting on the ballot. Now, when Style and Drafting brings its report on ballot to this Convention, if you don't like the way it is or if anyone doesn't like the way it is, they may then move to change it. Suppose, for example, that they put bicameral in the Constitution and unicameral on the side. I presume the first motion would be to put unicameral in and bicameral on the side, and the second motion would be a substitute motion to make it a joint vote and, at that point, we will consider whether we want unicameral or bicameral on the ballot and, if so, why. And I suppose we can end up voting to have the ballot any way we want and, at that point, we will get an expression of opinion from this body as to whether they're for the unicameral or bicameral.

**DELEGATE FURLONG:** Thank you. I have one other question. I supported the decision to bypass the—I suppose you would call them the minutes or the official journal; they have not been read in the past; we simply adopted it. I'm wondering now that this is to be published as I understand it, but then there will be no real chance to see it until sometime considerably later than right now. Is it—

**CHAIRMAN GRAYBILL:** Well, I think the minutes of the journal—the minutes come out in the daily proceedings, isn't that right, Mrs. Acher? So, if you'll watch your daily proceedings which are out for all but the last day or so, you'll find the motion that I signed in which we adopted in the daily proceedings and it should be available for today's debate, for example, tomorrow. Yes, Mr. Furlong?

**DELEGATE FURLONG:** But so that I'm perfectly clear, those minutes are not the official proceedings of the Convention, just a summary of them, is that correct?

**CHAIRMAN GRAYBILL:** The daily proceedings are a summary and they do—or they are going to contain, however, this motion that we made. Isn't that right, Rosemary? The motion that we just adopted your—the motion of the Committee of the Whole to the body—is contained every day in the proceedings. Now, the proceedings do not contain all the things that the journal contains. It's a summary of the journal. But, the journal contains all of the things that are in the proceedings, plus some further explanation and backing that is the transcript.

**DELEGATE FURLONG:** I'd like to make one following suggestion for whatever it's worth. You can already tell that I have a suspicious mind and we have from Style and—

**CHAIRMAN GRAYBILL:** No, I think you're just an inquiring person, Mr. Furlong. (Laughter)

**DELEGATE FURLONG:** Thank you, Mr. Chairman. We have before us a Style and Drafting report which I consider excellent, Suffrage and Elections Number 1. But I think in order to really do justice to the study of that as recommended by them, it would almost be necessary to have the official proceedings to compare. I don't know if it's practical or possible but I'd like to have somebody give it some consideration. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Furlong, let me discuss that with you a minute. First of all,

we've asked Style and Drafting and in their future reports, they are going to contain a text that is not marked up. In other words, they're going to contain a text of what they've proposed back to us clear so we can read it more intelligently. However, I would like to point out to the body that there is no text except that marked up one of what we have done and the changes we make here except your notes, my notes and the journal. Now, we have thought about it and for the moment, we are not typing up the motions as passed before it goes to Style and Drafting. Style and Drafting puts it through the MTST machines and it comes out in the form you find it there, and then they discuss it. Perhaps that's a flaw that we should cover, I don't know. But, it's a rather difficult process. You can find out what happened by reading the proceedings which, as I say, are about a day behind always. I don't know if that helps you but, in the future, we are going to get the text of what they propose as the amendment, and if you didn't think that was what we did here, you should of course make that point when we debate their recommendations. Are there other questions about Style and Drafting's reports?
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President, I move we recess till 1:00 p.m. this day.

**CHAIRMAN GRAYBILL:** The motion is to recess until 1:00 p.m. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it.

(Convention recessed at 11:45 a.m.—reconvened at 1:15 p.m.)

**PRESIDENT GRAYBILL:** The Convention will be in Order of Business Number 10.
Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman, Delegate Arness present.

**PRESIDENT GRAYBILL:** Are there other delegates who were absent this morning that want to announce their presence?

**DELEGATE CAMPBELL:** Yes, Mr. Chairman. Delegate Campbell also present.

**PRESIDENT GRAYBILL:** Mr. Campbell. Mrs. Erdmann.

**DELEGATE ERDMANN:** Delegate Erdmann present.

**PRESIDENT GRAYBILL:** Mr. Kelleher, for what purpose do you arise?

**DELEGATE KELLEHER:** I'd like to know whether this motion is in order, Mr. Chairman. For the rest of today only, I would like to move that the person who makes a motion, the proponent of a motion, may speak twice on that motion and that any other person—

**PRESIDENT GRAYBILL:** No, Mr. Kelleher, that motion is not in order. Now, the Chair wishes to announce for the benefit of the Convention that I want everyone to be aware so that no one is offended, the Chair intends to hold people strictly accountable to the subject being discussed. And if the Chair feels you are wandering from that, I'm going to gavel you down and ask that you stay on the subject. And by that I mean the strict subject that we're debating, the amendment or the proposal that we're debating. And I'm going to ask that you not wander around and not discuss in general, and discuss pertinent matters only. And I don't want to single anyone out, so I'm going to do it as nearly as I can to everyone. Once in a while my attention lags. So, with that little premonition, maybe we can all stick to the issue.
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President, I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

**PRESIDENT GRAYBILL:** The motion has been made to dissolve this Convention into Committee of the Whole. All in favor, say Aye.

**DELEGATES:** Aye

**PRESIDENT GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

**PRESIDENT GRAYBILL:** The Ayes have it and so ordered.

(Convention in Committee of the Whole with President Graybill presiding.)

**CHAIRMAN GRAYBILL:** The Chair will recognize Mr. Joyce of the Executive Committee.

**DELEGATE JOYCE:** Mr. Chairman, before I make any motion, may I make a few preliminary remarks about the Executive article?

**CHAIRMAN GRAYBILL:** Please do so.

**DELEGATE JOYCE:** Mr. Chairman, fellow delegates, in the Executive Committee article, I believe we have drawn an improved Executive article. That remains for your decision. First of all, let me say what we've done and how we've done it. We submit here a proposed new Executive article which will replace Article II, Article VII and Article V of the present Constitution. Article II we just simply deleted from the Constitution as obsolete. That's the one about the reservations—the military reservations—that no longer exist anyway. Article XIV, we really haven't deleted it. We've just worked it into the Executive article, so we're still going to have a militia if the majority report and the minority report passes, but we're not going to have any separate Article XIV. In summary, what we've done in the proposed new Article II, we've made these changes. We've eliminated from the Constitution—and let me emphasize this next phrase very, very strongly—but do not abolish the State Treasurer and the State Auditor, the State Examiner, the Board of Pardons, the Board of Examiners and the Board of Prison Commissioners. We've eliminated all those things from the Constitution in our proposed article, but we have not abolished them. They are still on the books as statutes and it's up to the Legislature whether to abolish them or not in the future, but we have not abolished them here. We have just permitted that they may be abolished. We've made these changes from the present Executive article to the new Executive article, that the Lieutenant Governor and the Governor must run as a team in the primary election. Why we did that, we'll explain when we get to that section. We've permitted in the new Executive article that the Lieutenant Governor can be a full-time job. And the way we've done that is, we've said that he can have duties that are prescribed by law or that may be delegated to him by the Legislature. It will be up to the Legislature, however, whether or not to fund to pay him a sufficient salary as to whether it will be worthwhile being a full-time job; but at any rate, we've permitted him to be a full-time job and we have restricted the Lieutenant Governor's present power in that he will not be the Governor automatically every time the Governor leaves the state. He will only be the Governor after the Governor is out of the state 45 consecutive days. Then he will, on the 46th day, he will automatically become the Governor. In the interim, however, in the first 45 days, if the Governor wants him to be the acting Governor, according to the way we've drawn the article, he can permit the Lieutenant Governor to do that. The next change we've made is that we've continued to provide that there will be a constitutional officer of public instruction, but we have allowed this office to be either elective, as it is now, or made appointive in the future by the Legislature; but we have not at this time made it absolutely necessary that it be an appointive office. And, we have made, I think, a great improvement in the next thing we've done. We have provided that the salaries of elected officials may be increased during their term, but not decreased during their term. And that is exactly the reverse of what the present Executive article provides. Right now, as the present Executive article provides that the salaries may not be increased during the term but that they may be decreased. So we've reversed that around. We've given the Executive budget constitutional recognition. We've modified the Governor's veto power in this respect—we have taken away the pocket veto, which means that any time the Governor vetoes a bill he must state his reasons. We've given the Governor what's called the amendatory veto power in that he can send a bill back to the Legislature and say, "I'll sign this if you'll agree with my amendment." The Legislature then does amend it, it'll go back to the Governor, and he can either veto it or not at that time, but presumably he won't veto it once they concur in his amendment. We've established a comprehensive disability procedure upon the disability of the Governor, and we've patterned it after what the 25th Amendment of the United States Constitution has done with reference to the President. We've clarified how vacancies are to be filled when elected officials either (Inaudible)...die or resign. We've clarified that a man holding a elective public office may file for any other office he wants during his term. That's been the time-honored practice anyway and we've made it perfectly clear that that will be constitutionally permissible. We have also retained intact, without changing a comma, the recent section that was passed with reference to reorganization. That's generally what we've done and as we go through it section by section, we'll show—we'll try to say why we've done it; but further than that, let me tell you how the committee broke down. There's a minority report and the minority report is essentially directed at Section 1, subparagraph 1. And in the minority report are in favor of continuing to make constitutional officers the State Treasurer and the State Auditor. Now on this particular issue the committee broke down as follows: two members of the committee wanted to keep all seven constitutional officers—that's what the minority report shows; four members of the committee were in favor of only keeping as constitutional officer the Governor and the Lieutenant Governor; the other two members of the committee, Mr. Garlington and myself, to identify us, would not go with the other four and we would not go with the other two. We, therefore, got the other four to come over to the majority position as being better than the minority position, so that now we have six people who have signed the majority report. They do not necessarily agree with it, but they've signed it and they think it's better than the minority. But, it's up to the Convention to see how many of these elected constitutional officers shall be retained. At the appropriate time, when I am speaking on—in favor of the majority report, I'll tell you why I think the majority report did what it did. And you can then disagree and we'll abide by the decision of the Convention graciously. So, with that in mind, Mr. President, I move that when this committee does rise and report, after having had under consideration the proposed Executive article, Section 1, subsection 1, that the same be adopted.

**CHAIRMAN GRAYBILL:** Will the clerk please read Section 1, subsection 1 of the Executive Article?

**CLERK SMITH:** "Section 1, subsection 1: The executive department shall consist of a governor, lieutenant governor, secretary of state, attorney general, and superintendent of public instruction." Subsection 1 of Section 1, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** (Inaudible)...fellow delegates, under the comments which begin on page 12, I am going to go through them which—explain exactly what was done and why. I've given you a little preliminary indication of what was done, but I'm going to go through the comments and explain to you what was done. The first section of Section 1, that's what we're talking about now, reveals the decision of the majority of the Executive committee as to the length of the ballot. It is neither short nor long. By a minority report, the long ballot is favored, and by an amendment that may be presented on the floor the short ballot will be proposed. Thus, the Convention will consider in all aspects the structure of the state Executive Department. The majority decision is to remove from the Constitution the officers of State Treasurer and State Auditor, and to place in optional elective or appointive status the Superintendent of Public Instruction. In addition, the committee is unanimous in removing from the Constitution the officer of State Examiner. (Inaudible)...in reaching this decision, the committee emphasizes to the Convention that removal from the Constitution does not automatically delete or terminate the office affected. They remain statutory offices until changed by the Legislature, and all the argument advanced to this committee for retaining them as elective officers are equally applicable to the Legislature. The principal reason for the committee decision is that the functions of the State Treasurer, State Auditor and State Examiner are changing materially under the reorganization plan, and we believe their future position should therefore not be frozen in their present form. Similar considerations apply to the Superintendent of Public Instruction, as will be explained later. Having stated the essence of our decision on these subjects, we will describe briefly our procedure in making them. We interviewed practically all of the principal officers of the Executive Department, so as to learn how their functions have been affected by reorganization under the amendment approved by the voters in 1970, and how their function may serve as forms of checks and balances on other functions. From this information, analyzed and compared with the modern trends in other states where applicable to conditions in Montana, we concluded with respect to the several offices as follows. The Governor: the people having decisively voted to implement a well-ordered Executive Department of government in place of the 100 or more boards, bureaus, commissions, et cetera, it is clear that a strong and responsive Chief Executive is desired. We have clarified his duties and his powers accordingly. The Lieutenant Governor: consistent with the above, we have authorized an effective, full-time Lieutenant Governor to serve with the Governor, and to become a trained, responsible successor to the Governor should that become necessary. It is clear that the Governor's increasing duties and responsibilities require more adequate staff support, and the Lieutenant Governor's position is an appropriate part of it. To obtain the maximum of effective cooperation between these two offices, we have provided that they shall be nominated and elected together. The Attorney General: he is now the chief legal officer of the state. He prosecutes or defends all litigation in which the state is a party. He supervises many of the functions of the various county attorneys, and through them the county officers and agencies. In addition to this, he is the legal adviser to the Governor and there arises divergence of opinion as to whether he should be appointed by the Governor, so as to be fully compatible with his client, so to speak, or be elected by the people, so as to be primarily responsible to them. The majority of the committee believes he should be in an independent status as an elective officer, charged with enforcement of all the laws for all the people. Since the Governor already has much authority, through the appointing power particularly, the majority favor an independent Attorney General free to inquire into the faithful performance of the duties by any state official or employee. We believe the Governor should have the right and the opportunity to choose his own legal counsel, but such counsel should be a part of his official staff rather than the Attorney General. The Secretary of State: this office has a long and historical significance, and we think it is—there are valid reasons to retain it for practical purposes as well as tradition. An official custodian of the state's most important Legislative and Executive documents, we believe he should also have the clear safeguard of a independent election and constitutional basis. His principal functions are ministerial, not policy-forming, and by removing certain constitutional boards to which he has served, there is little basis to fear that his position might in the future hamper the executive function of the Governor; and in that connection we have eliminated the State Board of Examiners. If the Legislature then repeals the State Board of Examiners, the Secretary of State will never serve on that. If they don't, he can, of course, be put back into the State Board of Examiners, but we are retaining him as a constitutional officer because we're always going to have to have a Secretary of State and the majority of the committee believes that he should be elected. The State Treasurer and the State Auditor: these offices are primarily charged with duties in the financial area. With the advent of reorganization, the entire accounting and bookkeeping procedures of all state and local agencies is being converted into a uniform pattern. Also, the Legislature has developed the process of legislative post-audit, and there is a growing pre-audit system. The committee believes it unwise to retain in constitutional status two officers whose principal services is in this very fluctuating field, and that efficient auditing and recordkeeping should be allowed to develop flexibly through legislation as technology and experience permit. The Superintendent of Public Instruction: this office is a part of the Executive Department and yet it affects solely the educational function, as established under Article XI. We fully explored the duties of this office, and its relation to the State Board of Education in order to determine whether it should be included, excluded, or modified. It performs practically no function exclusively referable to the university system, and the board performs practically no function referable to elementary and secondary education. Thus, the board is, in net effect, a lay board charged with complex responsibilities in a professional field, and is without full-time professional counsel and assistance. There is much public support for obtaining by appointment instead of election a professional educator to fill the gap which exists by virtue of the present Constitution. There is also support for retaining the present status of the superintendent's office, namely as an elective office. There is a clear need to resolve the doubt and ambiguity which currently exists as to the respective duties and authorities of the board and the superintendent, now resolved by mutual forbearance. There is a clear prophecy of vast change in the educational field, due to the constitutional problem as to property tax equality now being litigated in California, Texas and Minnesota. Therefore, the committee believes the whole structure of Montana's one hundred million dollar-per-year educational system should not be frozen in any form in the Constitution, and proposes to handle the superintendent's office by an optional method which allows the Legislature to make the office elective or appointive, as in its current judgment it finds advantageous. The Board of Examiners: composed of the Governor, the Attorney General and the Secretary of State in the present Constitution, this board was once very powerful. It is no longer so, meeting once a month for a few minutes to consider the unliquidated claims, if any, against the state. This change has occurred through the reorganization. Being no longer useful, the committee believes it should be deleted from the Constitution and to be revived by the Legislature if necessary, if the necessity for it should arise again. The State Examiner: most constitutions do not create an office of State Examiner, but Montana did in 1889. While he once examined the accounts of some state offices, he has become the examiner only of county and local agencies now. The Legislative Audit has greatly changed his function and many more changes are anticipated. It has not yet been determined how Montana's ultimate modernized accounting and record system, on a uniform basis, will be audited, as this must await its completion. In any event, this is a statutory matter which should be free for adjustment by the Legislature as changing conditions may require. The State Examiner himself concurs in this view that that office should be eliminated from the Constitution. Mr. President, that concludes the presentation of the majority report.

**CHAIRMAN GRAYBILL:** Very well, Chair will recognize Mr. Wilson.

**DELEGATE WILSON:** Mr. President, I move from a minority report to amend Section 1 of the majority report. My minority proposal is identical to the majority proposal except for amendments in Section 1, 2, 3, 4, 6 and 12.

**CHAIRMAN GRAYBILL:** Mr. Wilson, let's tell them that's on page 37.

**DELEGATE WILSON:** Right. Page 37. We have designed to make the Executive branch of government more responsible to the citizens of the state by providing for the election of the present elected executive officers. Mr. President, do you wish to have the minority proposal of Section 1 read?

**CHAIRMAN GRAYBILL:** Yes. May the clerk read Section 1(1), of the minority proposal?

**DELEGATE WILSON:** Yes.

**CHAIRMAN GRAYBILL:** Very well, Mr. Clerk.

**CLERK SMITH:** "Section 1, subsection 1 of the minority report. The executive department shall consist of a governor, lieutenant governor, secretary of state, attorney general, and superintendent of public instruction and state auditor." Section 1, subsection 1 of the minority report, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President, the minority of the Executive Committee favor the election of the major state executive offices because government needs to be responsive and responsible to the people that it represents. The people must retain their right to elect their officials. By elimination of their present power to choose the major state offices we do not want to disenfranchise the people of Montana of their sacred privilege, their right to exercise the freedom of choice in the elective process. The people deserve the right to choose who shall represent them in government. Montana, by constitutional amendment and legislative act, is reorganizing its governmental process under what is known as Executive Reorganization. This is placing all Montana's governmental administration and control directly under the Governor and the appointed department heads. This program is promoted in the name of efficiency and economy. Government needs to be more to its constituents than efficient and economical. It needs to be responsive and responsible to the people it represents. Its responsibilities includes not only the matter of protecting the public trust, it includes having the trust of the public. Public trust does not come from just a matter of confidence in the integrity of public officers, but rather it comes from knowing that public affairs are placed in the public eye. This can only occur when the activities of government are visible and when there are ways of checking on what our public officials are doing. The State Treasurer and Auditor are the major state financial officers. One receives all state money, the other disburses all state funds. One major concern relates to—regarding reorganization to the financial affairs of the state. This concern should be included in our proposed Constitution in such a way that we give the public the best chance to view critically its public officers, and to avoid open invitation to corruption. This should include a public official, elected and responsible only to the people, and who is not subservient to the varying political desires of some Chief Executive who perhaps will only be concerned with an approving look from the public at his administration. We know that no Governor will have continuous opportunity to observe all the actions of his administrative officers. To place all physical affairs in one administrative office, such as a controller's office, not only jeopardizes the Chief Executive, it is one open invitation to unviewed corruption. We ask then this Convention include separate physical officers as elected officers in this proposed Constitution in the offices of State Auditor and State Treasurer. The state Superintendent of Public Instruction is the major educational officer and as such should be elected by the people. The election of the superintendent should be protected from undue political influence by making her directly responsible to the people. We are with the majority committee proposal's comments on the election of the Attorney General. We provide further qualification in Section 3. At this time, Mr. President, I would move that when the Convention arises to consider Section 1 of the Executive report, that they adopt the minority proposal.

**CHAIRMAN GRAYBILL:** The substance of the minority report is to add the office of State Auditor to subsection 1. Is that correct, Mr. Wilson?

**DELEGATE WILSON:** And State Treasurer.

**CHAIRMAN GRAYBILL:** And what—treasurer?

**DELEGATE WILSON:** (Inaudible)

**CHAIRMAN GRAYBILL:** Yes. On page 37, that doesn't appear. That's my question.

**DELEGATE WILSON:** I'm sorry, Mr. President, there must be a mistake in the printing. I didn't catch that quick enough.

**CHAIRMAN GRAYBILL:** Right, I think there is, so I think that (Inaudible).

**DELEGATE WILSON:** If you go over to page 45—

**CHAIRMAN GRAYBILL:** Right.

**DELEGATE WILSON:** —you'll find it.

**CHAIRMAN GRAYBILL:** On page 45, under sub. 1 of 1, you'll see the State Treasurer; so you should all go in your books to page 37 and after "attorney general" you should add in "state treasurer". The purpose being to add both the State Treasurer and the State Auditor under the proposal of the minority on page 37.

**DELEGATE WILSON:** And the Superintendent of Public Instruction.

**CHAIRMAN GRAYBILL:** Right. Superintendent of Public Instruction is there. Very well, that's the situation.

Mr. Roeder.

**DELEGATE ROEDER:** Mr. Chairman, I really hesitate to rise in view of the admonitions that the Chair has given us about prattling on. I also hesitate to rise because I sit so close to my friend here the William Jennings Bryan of the Bitterroot, and Mr. Kelleher is establishing himself as the Demosthenes of the Yellowstone; but I am one of the four that Chairman Joyce referred to as having signed the majority report on the grounds that I thought it was the best we could do. I therefore feel constrained to support the majority report, again, not because I think it's what we ought to do, because I think it's the most politically practicable thing to do. Therefore, I would wish to support the majority report by speaking against this movement, or this motion to adopt the minority report. In speaking against the minority report, what we have to try to deal with is a system of belief. It reminds me of the fairy tale of the emperor's clothes. Perhaps some of you will remember that very poignant story of the two shysters who come into the kingdom with a capacity to weave this gossamer cloth and how the whole community went along with the pretense, and how these two shysters wove clothes for the emperor and so forth and so on, until the emperor paraded naked down the street and one little boy said, "The emperor has no clothes on." Incidentally, I think that story never ended right. I think the people murdered that little boy instead of agreeing with him. The pretense in this case is the idea or the belief, is what it is, that because people vote for certain officers, these officers necessarily represent them. I think this is a myth. I think this is a pretense. The idea that voting for officers other than the Governor and Lieutenant Governor is a source of protection to the people is completely false because what you do is diffuse power; and by the way, that's what we're supposed to be talking about here, you diffuse power and therefore make the exercise of it irresponsible. Now, Mr. Wilson, in his remarks, implied that we of the majority of the committee was proposing to disenfranchise the people. Curse the thought. We're not proposing to do that at all. I wouldn't want to tamper with what he calls the sacred privilege of the people. He also implies that we wish to deny them the privilege to vote for those who represent them. What I think we're trying to do in the majority is make the vote the people do have more effective. Now, maybe I can use an analogy to illustrate this point. I am an incurable flock shooter when I go out hunting birds, and my hunting companion keeps telling me, "Rich, you've got to choose your bird," and then to use the language of this beloved friend, "you've got to shoot him in the face." Well, I propose that keeping the executive system that exists in our 1889 Constitution is like flock shooting. The voter goes in and pushes a lot of things, scatter gun fashion, and doesn't really understand what he's doing. There is a lot of confusion. Does this make for accountability? I don't think so. That is all I had to say at this time, Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman, members of the committee, when this Convention decided to be nonpartisan, I didn't really believe it, but I'll have to admit that when a Democrat from Butte gets up to support Mrs. Babcock, the wife of the ex-Republican Governor, and Mr. Wilson, the dyed-in-the-wool conservative Republican from his area and goes against his good friend, Mr. Joyce, it's getting to be kind of bipartisan anyhow. (Laughter) I speak on this only because I feel so strongly. I wholeheartedly agree with the committee and particularly Mr. Roeder and his excellent work. We have to have a strong Executive; that Executive must be the Governor; he must run the state; he must be responsible to the voters. If he doesn't do a job, out he goes; if he does a good job, keep him. However, there is no need to disenfranchise these other offices. He doesn't talk about the State Treasurer; he can't run again. But we'll talk about Mr. Omholt who I happen to think, even though he is a Republican, is a fine, outstanding public servant. Now, when he does a good job, I want to be able to go in there and vote for him; and when he does a poor job, I want to go in there and vote against him. And I think that's the right, you know (Inaudible)...I don't know if I should tell you, but I'm Irish, and when my forebearers came over from this country they didn't have any vote. And if my father, who's in his grave, and my grandfather, who's in his grave, knew that I had anything to do with taking away the people's vote in any particular, they'd roll over in those graves; and I'm not about to do so. And I urge you not to do so. Now, if I had the advantage of Mr. Murray and had that phone of his and was in the party that he's in, I'd straighten this whole thing out. I'd call the White House and I'd get Dick on the phone and I'd say, "Dick, we're having a little trouble with people over here. They don't think it's important whether we retain our vote with these public officials." How about getting everyone down for about a 10-minute check down at the Bureau of Internal Revenue, because you go down to that Bureau of Internal Revenue and have to deal with these entrenched bureaucrats and you'd come back here, and you not only would retain the constitutional offices we have, but you would put the janitors in the Constitution. Because this vote is a precious thing, and once we start appointing these offices down here, you're going to get ignored because they're not going to get fired. All we can do is go to the Governor to complain about getting inaction and he's too busy. I don't want these people in power and I don't want them to have big jobs, but they're going to have ministerial jobs and I want them kept in there so we can vote. Now, there's one more thing that I would alot sooner say in executive session or in a caucus, but we're not going to have an executive session and we're not going to have a caucus, so I think it's germane to the subject and I think it's got to be said. I've heard delegates say that we've been brought here to write a pure Constitution; I hear delegates say we've been brought here to write a brief Constitution. This is no good because it's brief. Now, I had been under the impression that I was brought here to write a better Constitution. But the second thing is real important, was we came here to write a better Constitution that must be accepted by the voters, and we cannot continually throw away votes. Now, Mr. Roeder—fine student of government—I appreciate his feelings on this matter, but I'm also a student of government on the practical level, and I know what officeholders can do when their jobs are in danger. Now, Mr. Joyce makes the proposition that we're not abolishing these offices. No, we're not abolishing anything but we take out the State Auditor, we take out the State Treasurer, we take out the Superintendent of Schools; even though it's still in there it's going to be appointed if the Legislature so decides. We take those out. What do you think those officeholders feel about it? What does the State Treasurer think about it? What does the State Auditor? And, particularly, what do their friends think about it? Now, the principal people on this committee—that is, as Chairman and Vice-chairman—one is a Democrat, the Chairman; one is a Republican, the Vice-chairman—and I know their motives are for a better Executive branch. But what does it look like? We're going to knock out the State Treasurer—he's a Republican; we're going to knock out the State Auditor—he's a Republican. I'm not going to be able to talk to all these Republicans and explain we're just writing a better form of government. But there's going to be a lot of Republicans in this state that are going to feel, by gosh, those Democrats—58 Democrats—got together and they're wiping out all the Republican offices. Now, this can cost us a lot of votes and don't you kid yourself. And if Mr. Roeder were to think that this is an idle threat about these things, I want to remind this Convention, there were 2400 citizen suggestions—2400 citizen suggestions come in here against the abolition of certain offices. Now, I was on the Judicial Committee—we got a ton of them about the J.P.; we got a ton of them about the Clerk of the Court. And those are popular people and don't think they won't go out to kill this Convention if they can. And don't think they're not going to be effective because those 2400 people, if they've just got 10 friends, and most of them have that many relatives—but (Laughter) if they just got 10 friends, that's 24,000 votes. I had the Legislative Assistant look up the other day. As near as I can see so far, this Convention has cost the voters of Montana over 1,300,000 votes. Everyone talks about the big margin the Convention won on. It did win by a big margin. There was 133,482 for; 71,683 against, making a majority of 61,839. But we only have to lose 31,000 votes and this is gone. We can come back with the best Convention in the world and I don't know if you people have been going home on weekends—most of you, I suppose, aren't as close as I am. But I'll tell you what I'm getting when I'm home, and I'm getting, "What's going on over there?" And I'm telling you, we come out with the best document in the world, I have great fears we're not going to be able to sell this to the voters, and it isn't only having a better Constitution, it's having a better Constitution that people will accept. And that's our job and we've got to do it; and I sincerely suggest this Executive Department isn't going to be affected one way or another if we put these people back in, but it is going to be seriously hurt in the vote if we take them out. And I seriously urge that this isn't a matter of going against the committee, this is a matter of practical politics. Let's not make any unnecessary enemies. Let's not cost ourself any votes by unnecessarily throwing people out of jobs, because that's the way they're going to treat it. I join with Mr. Wilson and Mrs. Babcock in urging you to put these offices back in and make them all elective.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman, I would like to ask for some clarification. We are now discussing Article I, Section 1 of the minority report, correct?

**CHAIRMAN GRAYBILL:** Right.

**DELEGATE HARBAUGH:** And the only difference between this article and the majority article is the addition of the two officers, State Auditor and State Treasurer.

**CHAIRMAN GRAYBILL:** Right.

**DELEGATE HARBAUGH:** Now, I would assume that the discussion ought to center then on those two officials at this point. I have an amendment that I would like to offer but it does not pertain to either of those offices, and my question is at what point should—

**CHAIRMAN GRAYBILL:** Well, Mr. Harbaugh, if the minority report prevails then you'll have a chance to amend it again by taking out the one you want to take out, so I would think it's not particularly germane now.

**DELEGATE HARBAUGH:** Right. Thank you.

**CHAIRMAN GRAYBILL:** I'd like to decide whether or not we want to put those two in. Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. Chairman, I rise to support the minority report. Each time in this Convention, I'm going to vote to retain the existing offices listed in the Constitution for one reason and one reason only. I believe we're here to strengthen government, to bring it closer to the people, and every time you abolish their right or don't protect it in the Constitution to continue this voting classification, I believe you are taking democracy just one step away from the people. I've known a lot of politicians, and personally I have more faith in the electorate than the appointing system. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Warden.

**DELEGATE WARDEN:** Mr. President, I would just like to say that I did campaign on a short ballot. When I went back to Great Falls this last weekend I talked to a number of people and this was still their opinion, that this was a good idea. I would just like to say that most of the duties of the two officials, the Auditor and Treasurer, that are mentioned in the Constitution are prescribed by statute. The Auditor does not audit, and the Treasurer doesn't really hold the treasures in his hand. I feel that just because they have been in the Constitution since 1889, that this is not necessarily a reason to continue their existence. We have had a great number of people come before us and I would say that the—I cannot feel like some of my colleagues do about the appointed officials. Those that I have seen coming before us I have been very much impressed with. I feel that they are doing quite a masterful job in the different places that they are. Their knowledge of the scope of their jobs is quite great. They do not fear for their jobs. They do not make rubber stamp decisions. They're qualified and they're dedicated to doing the best job that they can; and I feel that there are some cases—granted, there is political expediency that is important and I am not one to not recognize that—but I do feel that I should have my say at this time and I feel that the two offices should be deleted from the Constitution. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. Chairman, I'm also a member of one of those four people who fought in the committee for the short ballot, and since most of you were not in that committee room for those long weeks of interviewing, I think I'd like to share with you just a bit of some of the things we saw. I realize the position of Delegate Erdmann or Delegate Holland in this matter of the vote, and that's why I think maybe our argument has changed from when we left the Legislative article. We talked about the Legislature. There were some emotional moments, but it was just a matter pretty much of the organization. Here we get to a matter of philosophy really, the vote, and the opposition is on that subject and I think Mr. Wilson probably summarized it very well when he said that we were defranchising the electorate. Those who spoke to us I think basically, in talking about the vote, said that it removed these people from politics. I found that hard to see. It also made them responsible to the people. I found that hard to see, too, because of the fact that many of these jobs were not in the light of day, so you could never really tell whether they did their job. I could vote for a lifetime and not know whether the Auditor did a good job or not unless there was some big public scandal. So my judgment in that matter was pretty much hearsay and I got the distinct impression when he said, "responsible to the people," that that got so diffused out there that he really had no boss, and that was able to operate on his own. I wondered if that vote really makes people responsible like they say. We got the other impression that there are various organizational models that we have to deal with. Our state government, the original Constitution, was put forward at a time when the county commissioner model was pretty much in vogue. That if, because of distances and because of the removal from government, you got three or four people who you elected and who were there to watch each other, you could go back to the ranch and pretty well make sure that nothing too much happened, tricky or dishonest, and therefore you could be sure that your government was under control. But we have some new models today. Certainly business gives us a model where you have a President who hires people, who serve at the pleasure of the President; and business gives us some very direct executive models that we don't find in state government. You also find on the national level the cabinet model where the President is elected by the people and then chooses the very best people he can find to serve the various positions and they're directly responsible to him. I think we have a choice here, of whether we're going to stay with the county commissioner model or look real honestly at some of the new models that our modern times give us. I remember one of the high points in the interviews with the state officials. I'd kind of like to describe it to you. It's one of our well known and a man that's been elected for many, many terms—a very popular figure—and I must say he does a good job at the job he does. The question came out someplace as it went around the table, "How would you like to—or what would you do to improve your department?" And he said, "If you gave me free reins to improve my department", he said, "I would go out and find the very best people I could to come into my office and serve in the very best way possible and to be responsible directly to me." And yet it was the very method he didn't want to work under himself. He wanted, as he said, to be voted upon and to be directly responsible to the people. I got the distinct impression many times in our interviews that when you say that, when you're responsible to everybody, it ends up by being responsible to nobody. Without going too long here, I think there's another impression I had that you should be aware of, for what it's worth, maybe in this question or some other question. Since Executive Reorganization and the 20 department model that has been mandated by the people, to see that organization stand right alongside state-elected officials, I got the distinct impression that we now have in the State of Montana two governments: one of appointed officials or hired officials or whatever you want to call them, who are single department heads of various departments of the state government, who I got the distinct impression were doing excellent jobs, were responsible to the person who hired them, and there was a definite professional expertise in what they were doing. In interviewing the elected officials, by and large, I had a very opposite impression and that is that most of these through the years have been relegated to ministerial tasks. Who are elected but have, by what they're doing, have no real way to be responsive to the voters and are put in pretty much year after year on a record of a good job done, but a record of a job that doesn't have to be elected to be responsive to the people. There are some, I guess some terms used in talking about this executive unity that should be important for us. There is, first of all, the words, "multiheaded." Well, see, when you elect people, you make them separate heads of things and you've a multiheaded Executive Department; and I wonder who ends up being the head. I mean, do you really have a Governor who is the head of the state executive. You also have the other word, and all these are explosive words, "the watchdog." We need watchdogs in government. I wonder if we need 8 or 9 or 10 watchdogs, all watching each other, to run a state government. And finally you have the word "buck-passing", and that can happen so easily when you have multiheaded business. We talked about the people's advocate this morning, that whole difficulty to finding who really is responsible. I am very impressed by the words of Governor Joseph Dixon some 50 years ago and it just summarizes, I think, the position that may not be the most popular, it may have the problem of how the voters will feel about defranchised. But Governor Dixon said, "Let us nominate and elect the chief executive of the state, then give him full power to name his assistants in administering the various departments of the state government, and we will know exactly where to place our finger in locating blame or praise."

**CHAIRMAN GRAYBILL:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman, I rise in support of the minority report and I'll have to agree with Delegate Holland completely. He expressed all of this much better than I could. Now, he comes from an area and he represents a segment of Montana completely different from what I do, but I find that the reaction in my part of Montana from the people is exactly the same that Delegate Holland has; that they do want to elect these people. And therefore, I must support the minority report. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. President, my little granddaughter sent me for Christmas this "Love America," and I gave it to Charley Mahoney and it did him a lot of good, I'm sure. And I wish that I could've had one for every delegate because Charley looks at this and he turns it—keeps it up or else he turns it down when he gets mad. But I was one of the four, and feel constrained to speak at this time and I'll try to make it brief in—according with your usual admonition. But I want to tell you one thing about our committee report and that is, there's a togetherness about it, even with the minority. We have achieved, I think, for the executive power real executive responsibility. We have placed—we haven't done it alone, it was done by the people when they adopted the reorganization amendment and the last Legislature implemented it and have it in the 20 department program. But, we do have what I would call a hodge-podge of executive confusion in the article, and some of us were of the opinion that the Executive article should just list the Governor and the Lieutenant Governor. We did make a practical compromise in arriving at our report when we left the Secretary of State and the Attorney General in there, but we haven't, by any means, abolished the office of Auditor and State Treasurer, or with regard to the state Superintendent of Public Instruction. But I think that I, in the course of the time that I've been newspapering and in Montana, that I've had a chance to know every Governor and talked with him and have interviewed him in the last 50 years. And one of the frustrating things about Governors has been that they had the executive power as written into the Constitution, that the Governor shall be the Chief Executive officer of the state, but they couldn't execute that power by reason of some hamstring situations that developed. As a result of the work of the Legislative Councils down through the years and the reorganization program, much of that now has been concentrated in the Governor's hands, and I think that this article will implement that to a great extent.

**CHAIRMAN GRAYBILL:** Mr. Woodmansey—oh, excuse me.

Mr. Martin.

**DELEGATE MARTIN:** I'll get my breath and start all over again. (Laughter)

**CHAIRMAN GRAYBILL:** Okay.

**DELEGATE MARTIN:** I think that the committee has done its level best to come up with a proper solution on this program, but we did recognize the right of anyone who had a division of opinion of it to express themselves in the minority report. At one time it looked like that they needed three for a minority report, and I at that time had indicated that even though I disagreed with the minority, I would sign the report in order that they would have an opportunity to present their view to the 100 delegates. We have only a few differences of opinion and I think that most of the conversation that we will have will come in this first article, and that's the reason why all of us wanted to have a little bit of our say. We'll have some other ideas as some of these other sections come up, but I do think that, regardless of what happens, we have developed an Executive article which will be a good improvement. And at the same time, if we can provide a strong Executive and a strong Legislature to be a check and balance, I think we will have achieved a great deal for a better Constitution for all of Montana.

**CHAIRMAN GRAYBILL:** Mr. Woodmansey.

**DELEGATE WOODMANSEY:** We've heard some comments about power that needed to be in the Executive branch of government, and with state reorganization we've placed tremendous power here. And there've been comments about how well this has worked, and I think it's easy to say it's worked well, and it's worked only less than a year, or a little—or about that. I think we have maintained the offices that we've had over a long period of time. I believe they're necessary and I would hate to go back and try to convince the people I represent that a change is necessary. I have had no talk from the people that I work with and live with that they want a change, and I will find it very difficult to convince them to vote for a change such as this. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, I'd like to make a few comments in response here. It is very easy to wave the flag of "let the voters vote" and I think other things being equal, no doubt anyone would say, "Yes, I'd rather vote, than no, I would rather not." But the voters are also people who are taxpayers and everyday citizens of this state, and there are some more fundamental feelings that I think they also have which have already been manifested. And the purpose of my few remarks here is to remind the delegates to think of those, as well as the more flamboyant issue of "Shall we let a voter vote." The reorganization amendment was voted on by the people 2 years ago and I see no way to interpret the significance of that favorable vote except that it means the people desire efficiency and economy in their government, that reorganization was a way to get it out of the fragmented constitutional establishment that we had, and that therefore the Constitution had better be amended so that we could have efficiency and economy in reorganization. Now, that is a very loud, clear voice from the voter, I think. If you are wondering whether the voter is worrying about his tax expense, just look at the fate of school bond issues and other kinds of governmental bond issues around the state in the last 2 or 3 years. Are the people concerned about economy and expense and the rising taxes? Indeed. They're perfectly willing to cut down the school, or the special levy, or the new improvement of some kind, just because it costs too much. Now, translate that to the problem we had in the state government. I suspect that if you said to some of these voters that these people are describing, now, do you want to have a vote or do you want to have a more economical government that maybe can reduce these rising taxes for you a little, then I suspect they'd say, we'd rather not have it quite so expensive. Now, the Executive Committee undertook to keep these considerations in mind as well as the simple matter of popularity in voting for names. And I want to point out that the trends around the land are not in favor of more and more voting for more and more officials, but are in the opposite direction. We were all, during the campaign, furnished with the attitude and the opinions formed by the League of Women Voters by their researches in this field. They referred us to quite a few authorities from elsewhere, showing that, in fact and in truth, the trend across the land is toward centralization and reducing the fragmentation of the old fashioned state governments rather than otherwise. The model state Constitution provided an example of this but we have a couple of examples that are fairly close at home that I think should be of interest to the group. One of them is the fact that in January of 1972, the Montana YMCA youth and government group met, I think, in Lewistown and formulated a state Constitution. And I was really both satisfied and happy to find that its Executive article corresponds exactly to the one that is in the majority report here. So, if we're talking about the popularity of this at the polls, the younger generation which would not be much beyond those who composed this thing, might say, "Well, they did an efficient job, they were on the ball." I notice also that the North Dakota Constitution has exactly the same as we have proposed here, save and except that they include three public service commissioners which have been a statutory office in Montana for a great many years. So, it seems very clear that we, in this majority proposal, are not swimming against the trend. And, then, I just do have to say a word about Mr. Holland's uncle. I'm quite sure that he doesn't need to experience any necessity for turning over in his grave because we have not eliminated the offices, and if the people want the people's vote in all the years to come, then the people's representatives only have to do the one simple thing of not repealing the statutory office of State Treasurer and State Auditor. That's all that is involved, and all these flag waving arguments made now can be made every 2 years at the Legislature with equal effectiveness; and those offices will retain in office and the people can vote for them as much as they want. The point about the matter is that in the fluidity of this field of finance and recordkeeping and what-not, as it is now, we just think it isn't smart constitutional draftsmanship to lock those positions into the Constitution so that they, for the next 80 years, will remain as they have for the last 80, during most of which time they did very little of the duties that are supposedly to be performed by those offices. The State Auditor, more than anything else, is the commissioner of insurance. He's not an auditor at all. I think that's sufficient. I was going to make a little suggestion about our concern over the popularity of this Constitution back home. I appreciate very much Mr. Holland's concern on that subject. I shared it last night and did this morning and do now, but I think it is more applicable to what we did to the Legislature then as what we may do to the Executive Article.

**CHAIRMAN GRAYBILL:** Mr. Lorello.

**DELEGATE LORELLO:** (Inaudible)...the word now seems to be a point. It seems that we're told almost daily that we're really not qualified to vote. We tell people this all the time—we're not qualified. Maybe some of them weren't when they look at some that they sent. I don't know. (Laughter) I would like to assure Delegate Arbanas and the lady from Great Falls, Mrs. Warden, that not everybody from Great Falls share your feelings. Several weeks ago we had an executive public hearing and this lady brought up the fact that she would never vote to give up her right to vote. I feel the same way. I'll never give up my right to vote today, or I won't give it up to vote in June when I vote on this thing. I would like to say that I'd like to support the minority report. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President, I, too, rise in support of the minority proposal, and I do so on the principle that unless a change in our present Constitution will work a substantial benefit, I will vote against it; and I would do so on the premise that every change we make here is going to cost us some votes unless it does work a substantial improvement. And I fail to see how appointing a Treasurer and appointing an Auditor is going to strengthen the Executive. Both of these are ministerial positions. They have absolutely nothing to do with executive decisions. If we were to appoint the Attorney General, of course, that would be a different proposition entirely. There is an office that does have considerable executive swing; and if he and the Governor—or, rather, if he were appointed by the Governor then you would, indeed, increase the executive power of our Governor. But under the present situation, we would run a considerable danger and work no appreciable advantage in our present system. There's going to be a lot of people that look at just these two offices and I refer to the many, many insurance men around the state. They want to see an elected Auditor. And if this Constitution goes to the people in a block on most of these provisions, with a few of them set aside for separate vote, we're going to keep accumulating "No" votes on things that are very minor in nature. I submit the best way to do this is to suggest that perhaps we've done the majority of our work in strengthening the Legislature. There will be future amendments to our Constitution and these minor things can be fed to the people from time to time, one at a time. The matter of the appointment or the election, for example, of the Treasurer or the Auditor. And over the next decade, these minor little things that might cost us votes when viewed as a whole, can be considered separately by the people and the Constitution strengthened thereby.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, we're all concerned about making some change or not making some change with respect to the rights of the people, and I wonder if everyone fully understands the service that the State Auditor is providing the citizens of the State of Montana. We want a peoples' advocate, we want a consumers' protector. With respect to the largest industry that has effect upon the State of Montana, the insurance industry, the State Auditor is doing precisely that. He is the commissioner of insurance and his title may well be misleading, but when a citizen has a complaint with respect to the public policy of this state as it affects the insurance industry, the State Auditor, as the commissioner of insurance, is the protector of the people. And he does that job and he does it well, and he does it because he knows that he must satisfy the citizen, and that if he continues to satisfy the citizen in watching over that particular industry, that he's going to be returned to office. He's very responsible to the people now and he's responsible because he's selected by the people. And I submit that we should maintain that high degree of responsibility by making sure that the people continue to select their protector in that most important area of everyday life. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** Mr. Chairman, members of the Convention. I am a member of the Executive Committee and was unavoidably absent at the time the committees prepared the two reports, so my signature does not appear on either one. I rise now to support the minority report. I could very well have signed either committee report, certainly, with the qualifying language that both contain. And I could have, from a theoretical point of view, joined with those who preferred a very short ballot. In what we call political expediency, as though it were a dirty word, I feel that I would have and I do now support the election as constitutional officers of all the members named in the present Constitution. I regret, frankly, that this includes particularly, the State Treasurer, because I do believe that that should certainly not be a constitutionally elective office. And, I will not go into all of the ramifications of the lines of thought. I'm sure we've all become very fully aware again that things are not black and white for us and they're not black and white individually or collectively. But we have to finally make a decision here. The office of Auditor is one in which I am particularly interested, and hopefully you all have on your desks and may have had a chance to see a proposed amendment which I will discuss later which would strengthen the office of Auditor. I want to call your attention to it just that much now so that in your deliberations as to whether or not to retain the office you will realize that it could become somewhat different from what it has been and is today. But, in all events, somewhat in the line of what Mr. Garlington spoke the other day of trying to keep some principles in mind, I would like to offer this for your contemplation now because I feel it bears on the decision we're going to make. Delegate Roeder pointed out that we may be diffusing—was the word he used—the executive power, and he feels that this is an error. Yet, in the name of expediency, I feel, he did not try to eliminate some of the offices that he perhaps would've preferred to see eliminated as elective constitutional offices. And in that same general light, I go along with that portion of the majority report and I still support the minority. But, I wish to point out, we do diffuse the legislative power if we use two houses. We do diffuse the executive power if we have the people elect many different individuals to carry out certain functions of government. But this is a question for the people to decide. I do not feel we should deprive them of that opportunity and even though I might feel differently than a majority of the people in the state on this, I would support their opportunity to operate the democracy based upon the beliefs that they have. I believe that the Executive and Legislative branches of government are no longer as much of a check and balance upon themselves as they were intended to be. I think this is a very important thing. They have now become much entwined and they both actually make laws now. Even the Judiciary makes laws now, in a sense. This has occurred due to the general fact that government now is active in meeting new needs and demands of its citizens and as a result, the Legislative branch is now primarily a review board. It merely reacts to Executive proposals, and it can do little more over the long haul. This leads to this melding of the Executive and Legislative branches. The role of the federal government and of local government also has been pushing us into this direction of a type of partnership with the state Executive and the state Legislative branches, and I can assure you that the Executive is the senior partner. The consolidation of our agencies into "super agencies" is going to speed this along further, and the Legislative branches and the Executive branches are going to be removed farther and farther from the people. In discussing this, I am, in a sense, laying the groundwork for the expansion of the office of Auditor which I believe is an essential, I believe just as essential as the office of Governor. We are abolishing in the majority report the State Board of Examiners, the office of State Examiner and the State Auditor. What is left? Nothing in the Executive branch of government or in our Constitution which would deal with the question of examining, auditing. I do not believe that the people in Montana are going to be favorably impressed by the elimination of the safeguards of having some of that material actually in the Constitution. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Simon.

**DELEGATE SIMON:** Mr. President, I rise in opposition to the majority report on one condition, and I support the minority report for this reason. If the committee—and they've done a good job, I want you to know that, in my opinion—had they wanted to strengthen the government—the Governor's office and the hands of the Governor in the Executive branch, it seems to me that in the two proposals all we're doing is pulling a couple of feathers out of the chicken. Now, when—if you were going—I would have gone along with the majority report had there been an effort to go beyond—not go beyond putting the Governor and the Lieutenant Governor on one ticket. But as long as the committee saw fit to include the Secretary of State, the Attorney General, the Superintendent of Public Instruction, I have my doubts that we have strengthened the government at any great degree. Now, when it comes to the State Auditor, I'm in full accord that the State Auditor is going to be a much more important office than it has been in the past and I would strongly urge that we leave the State Auditor and the State Treasurer in the Constitution if we are going to leave the other major areas of state government as in the majority report. Now, if you're going to really strengthen the hand of the Governor, it seems to me that the only quarrels that I've seen in any accounts of government has been where the Attorney General has had some differences. The Secretary of State has had very little differences. I cannot see in any part of this where you have done anything in my opinon that strengthens the hand of the Governor; if you go that far, I would have supported wholeheartedly if you had stopped when the Executive Department with the Governor and the Lieutenant Governor running as a team. From there on, I cannot see that the proposal does much for strengthening the hand of the Governor. These other two offices are not something that has any particular influence on the Governor's decisions. They are the two offices that I, as an individual in the State of Montana as a voter—they are the two offices, especially the Auditor, that I am concerned looking out for me. I would support the minority report.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. Chairman, I stand in favor of the minority report and in opposition to the majority report. At this point, I'd like to make a few comments, if I may, about one specific aspect of the majority report that needs a little bit looking into, I think, and it concerns the election or appointment of the state superintendent.

**CHAIRMAN GRAYBILL:** You will be out of order on that until we get to the section that talks about her appointment. This is just whether or not she's a constitutional officer, or he.

Mrs. Robinson.

**DELEGATE ROBINSON:** Mr Chairman, I rise in opposition to the minority report. It seems that most of the statements that have been made in support of the minority report have indicated that while the office of Auditor and the office of Treasurer really do not do anything, we really ought to keep them to give people a chance to vote on them. I suggest that what you're really doing by trying to give people the opportunity to vote on people that really don't do anything, you're really pulling the wool over the eyes of the people. Just to admit to yourselves that the people of Montana want to vote for someone that we have decided—the committee has decided in the majority report and the research booklet on the Executive branch clearly goes through the activities of the Auditor and the Treasurer, indicates that they do not perform any constitutional function; indicates that the functions that they were given have been usurped by the Legislative Council and the legislative post-audit, I think is really in essence a defeat of your argument. The people should have the right to vote, yet they should have the right to vote for people that don't really do anything. Give the people of Montana credit for having enough sense to realize that they don't really want to vote for someone that you've decided doesn't really perform an essential service.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman, I rise in support of the minority plank and also to make two statements. I think that maybe we should make a little something clear here. Mr. Garlington stated, number one, that the taxpayers would of course feel grateful to us if we eliminate these two jobs. But in fact, even if we do eliminate them as elective jobs, the jobs are still going to be there. Second of all, Mrs. Robinson makes the statement that these two positions, the Auditor and the Secretary of Treasury—or the Treasurer of the State of Montana, absolutely do nothing. Well, they do have functional processes. Actually many of the elected people do not always fill a constitutional role but in a way they are, and where you can divide the line between a constitutional proficiency of their jobs or something else is beyond me, but I'd just like to make this clear. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Warden.

**DELEGATE WARDEN:** Is this on? I'd just like to say that because some of these offices would not be in the Constitution doesn't mean that they will not be elected office. Not the fact that we're trying to take away the people to vote for these people, it's merely to take them out of the Constitution. It was not our purpose to make them appointive offices. It was not our idea to take the people's right to vote for them away. And I would like to say one other thing. Sometimes we can get emotionally involved in incumbents, but I would rather think that this would be several years off if this were to pass and who knows who's going to be running for these offices. It may be the incumbent but it may not be, because some of them can't succeed themselves. Thank you.

**CHAIRMAN GRAYBILL:** Now, the issue is on Mr. Wilson's minority report which adds the Auditor and the Treasurer to the first section of the Executive Article. If someone has something to say that hasn't been said, please rise and say it.
Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman, I think the taxpayers are vitally interested in these two offices. They're handling the taxpayers' money and they should be directly responsible to the taxpayers. And how are they going to be that unless they have a constitutional office so you can continually vote for them?

**CHAIRMAN GRAYBILL:** Mr. Artz.

**DELEGATE ARTZ:** I'd like to ask Delegate Robinson a question, please.

**CHAIRMAN GRAYBILL:** Mrs. Robinson, will you yield?

**DELEGATE ROBINSON:** Yes.

**DELEGATE ARTZ:** In your report, or arguments, you were downgrading the functions of the Auditor and that they didn't amount to much. I was wondering, have you read Delegate Felt's proposal for later that does make this a different proposition?

**DELEGATE ROBINSON:** Yes, I certainly did, but I was speaking in opposition to the minority report. The minority report in its original essence does not encompass the remarks of Mr. Felt. There is a distinct difference there.

**CHAIRMAN GRAYBILL:** Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. President, I would just like to express my appreciation to those of you who have supported the minority report. I believe in doing so that you're going to be doing what's right for Montana. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on the minority report which adds the State Auditor and the State Treasurer to Article I, Section 1, of the Executive branch.
Mr. Joyce.

**DELEGATE JOYCE:** I just thought that perhaps, being that I am on the majority report, I ought to be able to make a few remarks before we vote on Mr. Wilson's proposal. And because I'm a practical politician and a lawyer, I know the minority report's going to pass. It's obvious here. But let me make this point. It seems to me that most of the things that have been said on the floor today are completely beside the point. I know that makes a lot of people mad and I don't mean it personally at all. The point is simply this. We are not abolishing these offices in the Executive Article. I said that and emphasized it to begin with, but nobody believed me. Everybody says, "You are abolishing them." Even my fellow supporters on the majority report think that we should abolish them and that we are abolishing them. We are not abolishing them. What we're talking about here, as I see it, is just an elementary rule of law which you can't convince anybody it's true but it is, and that is this—the Legislature, when we enacted Section 1 of the Legislative Article, has plenary power to enact any conceivable law that comes to their mind that can get enough votes and get through whatever houses and signed by the Governor. So, giving the Executive Article—the Legislature complete control, now what we're doing is we're limiting them and we are limiting them in the majority report to say that you can't abolish these offices that we've constitutionally required. We are saying, you may abolish these other two offices but you don't have to. Now, the point is simply this, I think. The State Auditor is all upset because he thinks he's going to lose his job and all the insurance people are all upset, but I submit that at the next session of the Legislature, the Legislature can repeal all of the duties that the

State Auditor now has. They can take away his power to be the insurance commissioner because those come to him by the virtue of the statutes. They can be taken away from him by virtue of the statutes. The same can be said for the State Treasurer. So, all the majority report is really doing is permitting some time in the future that the Legislature may recognize the facts of life that these two offices really aren't very important and could be done away with. But they don't have to and I don't think they ever probably will. But the fact of the matter is, is that all the majority report is doing is saying that it may be done and nobody wants to do it, and we aren't going to be able to, that the 20 amendments section is also a limitation on the power of the Legislature. They cannot restrict—they cannot create more than 20 bureaus under the current Constitution, but—and it also says "The heads of those bureaus will be appointed", but it also says this—"unless otherwise provided by law", so that the Legislature under the present Constitution can create 23 new elected officials if they want to and maybe it'll be desirable in the future to do so. All we're saying in the majority report is that they don't have to do so. We're leaving it up to the Legislature, and all the majority report really is doing is recognizing that we aren't abolishing the offices but we're permitting that they may be abolished in the future. So that, in adopting the minority report, we're just tying the hands, saying they can't abolish this office forever, and maybe that's the way the people want it.

**CHAIRMAN GRAYBILL:** Very well, the issue is on—Mr. Wilson, do you want to close?

**DELEGATE WILSON:** I'd like to make a few comments, Mr. President, since our esteemed Chairman had the privilege. I suggest to you delegates that we have been considering for the last few days the right of the people to vote. We've gone at great length to protect this right to see that they did have the right and the qualifications to vote. Now, who are we going to provide them to vote for? Are we saying that we're going to give you these rights but you may only vote for two or three people who will run your state government? Again, let me say, that the elected official is responsible to the people who elected him and they can take a look at him every 2 years, every 4 years, or whatever the term is, and remove him from office or keep him there if they see fit. I think Mr. Martin emphasized more than anything the need of the people to have the right to vote for who represents them in government. The reorganizational act has placed great power in the hands of the Governor and in the future Governors that we may have. While Mr. Joyce has indicated that this could go on being elected offices, still it would be subjected to the whims and fancies of politics. By putting it in the Constitution we are protecting the right of the people that we have talked about for the last few days who have the ability to vote for the people who shall represent them in government.

**CHAIRMAN GRAYBILL:** The issue is on Mr. Wilson's minority report, adding "the state auditor and the state treasurer" to Section 1 of Article I, of the Executive branch.

(Delegate Roeder requested a roll call vote.)

**CHAIRMAN GRAYBILL:** The ballot is open. So many as are in favor, vote Aye; opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Please cast the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Absent |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |

| | |
|---|---|
| Cross | Nay |
| Dahood | Aye |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill-Chairman | Nay |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Aye |
| James | Absent |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Absent |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Aye |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK SMITH:** Mr Chairman, 53 voting Aye, 44 voting No.

**CHAIRMAN GRAYBILL:** 53 votes having been cast in favor of the minority report, it has been passed. Mr. Harbaugh, do you have an amendment?

**DELEGATE HARBAUGH:** The Chairman has the—

**CHAIRMAN GRAYBILL:** Do you want us to read the amendment?

**DELEGATE HARBAUGH:** Yes.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh's amendment would delete "the superintendent of public instruction" from Section 1, Article I.

Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman, I am in sympathy with what Mr. Kelleher said when we began this debate, and so I will try to present my reasons for this change as succinctly as I can. I'm not objecting to having the Superintendent of Public Instruction mentioned, per se, in the Constitution, but I would not like to see this office mentioned in conjuction with the Executive article because I don't believe this is where it belongs. I think that many of the arguments that we've heard this afternoon as we've discussed the long and the short ballot do not apply to this particular office. I think that we have pretty much agreed that education is a unique department in the State of Montana, and so for these reasons, I would like to have the Superintendent of Public

Instruction deleted. First of all, I think that certain qualifications are very essential for a person to hold this office. There is no mention at all of any qualifications other than that of a voter in the Executive article for holding the office of Superintendent of Public Instruction. I believe that if the Superintendent of Public Instruction were appointed by a board, that they could set qualifications for this office and could conduct a search for a person who was highly qualified to hold this office. If the Convention adopts the two-board proposal which is being proposed by the majority report of the Education Committee, the Superintendent of Public Instruction will serve as an administrative officer to carry out the policy of a lower board of education. Now, an elected official is responsible to the electorate and not to a policy-making board; and I submit that to put the Department of Education in this sort of bind could cause all kinds of problems. Mr. Joyce stated earlier that, in reference to this office, that the relationship is unclear and I think he used the words, "mutual forebearance," is the way they have gotten along in the past. And this is because a very small portion of the time of our present Board of Education was devoted to matters of lower education over which the superintendent has supervision. So, I think that in the interest of some clarity in this situation, that it behooves us to take this office out of the Executive Department and put it in the Education article where it belongs. At the local level we elect school board trustees and they in turn select a superintendent to run our local schools and no one presumes, I'm sure, that we should elect within our local communities superintendents to run our local schools; why should we presume that we should elect a state superintendent. Election to the office of the Superintendent of Public Instruction is a very expensive proposition, and I think that it precludes the person from that office who does not have considerable financial resources or who does not have substantial backing from a political party. I took the time to do a little investigation about the expenses of running for this office. Currently, we can expect that in the next election a person who runs for this office will spend somewhere between $15,000 and $20,000 if that person expects to be elected. And judging by the trends over the past 16 years, I came to two conclusions after looking at what has happened. The first conclusion is this—that an incumbent in this office has been unseated by an opponent only by spending three times the amount of money which the incumbent spent. And the second conclusion is that there seems to be a very definite correlation between the amount of money spent and the success of a candidate. In only one instance in 16 years did a candidate lose when he spent more than his opponent and in that case the opponent was an incumbent. It's objected that the appointment of a superintendent removes the administration of education from the electorate. I wonder how closely we do want to tie this office to the electorate? The truth is that the function of the superintendent is primarily an administrative position rather than one which is of a discretionary nature. Statutes provide for almost all of the functions which the superintendent presently performs. In order for the electorate to exercise a responsible voice, I feel it should ballot only for those officers who exercise a discretionary voice rather than an administrative voice in affairs. Throughout the United States there has been a trend toward the appointment of the chief educational officer. The new Constitution which we just received on our desks a few days ago from North Dakota does not mention the superintendent in the Executive article, and has left that under the Education article. In checking the trend of the states over the past 25 years, there's been a significant change in this direction. In 1947, 31 states elected their superintendent; by 1969, only 21 states have elected superintendents. 1947, 11 states appointed the superintendent by a board; in 1972, 27 states appoint the superintendent through the board. Four of the states appoint the superintendent through the Governor. Reorganization has been mentioned. Reorganization, let's remember, was adopted by the people. The people voted on this and it seems to me that they expressed their will, that they do not want a proliferation of state government which is encouraged by the proliferation of elective offices. The superintendent's office was not included in the executive reorganization but yet we have a department of 165 staff in this, under the supervision of the Superintendent of Public Instruction. We don't elect the head of the Highway Department. We don't elect the head of many other departments, and I fail to see why this should be an elective office. Since 1947, studies authorized in this state, lest you think it is meaningless, the trend that has taken place in other states, since 1947 in this state there have been numerous studies which indicate that what we need in this state is an appointive office of education. The joint committee on state government organization in 1947 suggested that the office be omitted from the elective process. The

Peabody Report in 1958 pointed in this same direction. The Durham Report in 1958 urged appointment by the board. In 1960 a biennial report of the office of the Superintendent of Public Instruction itself warned against the hazards of election, and urged the removal of the office from partisan politics. In 1962 the Legislative Council Report urged elimination of the state superintendent as an elective office. In 1969, the constitutional revision subcommittee urged removal of the superintendent from the elective office. We say on the one hand that we don't want education to be involved, and enmeshed in politics, and on the other hand we run scared of an electorate. Let's dare to take a courageous stand when we write this Constitution and let's dare to draft our articles in accord with what we think is right, and let's not be stampeded by attempts which may be invalid to second-guess the electorate. I urge that you support this amendment.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, I move we stand in recess until 3:20.

**CHAIRMAN GRAYBILL:** Three, what?

**DELEGATE ESKILDSEN:** (Inaudible)

**CHAIRMAN GRAYBILL:** The motion's been made that we stand in recess until 3:20. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** (No response)

(Convention recessed at 3:05 p.m.—reconvened at 3:20 p.m.)

(Delegate Aasheim assumed Chairmanship of the Committee of the Whole.)

**CHAIRMAN AASHEIM:** The Convention will now be in order. The Convention is in order. The Chair recognizes Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, members of the delegation. I rise at this time to inform you what we plan on doing. If we show real progress between now and 5:00—between now and 6:00, I should say, then we will adjourn. If we get bogged down, we will probably recess at 5:00 and come back at 7:30. So that'll let you have time to make your plans for your evening meal.

**CHAIRMAN AASHEIM:** The Chair recognizes Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, Mr. Chairman, being that I am the Chairman of the Executive Committee and therefore the floor leader of this article, if that's proper, I resist Delegate Harbaugh's amendment for this, because I think the issue could properly be brought up squarely under Section 2. So, first of all I would request that if he would, he would withdraw the amendment and bring it up under Section 2, and I would also like to move that if he will do that, that we would pass Section 1 and take up Section 2. Then, once the Convention decides on this issue which he raises, which as I understand it is quite clearly this—he wants to have the Constitution provide that the Superintendent of Public Instruction shall be appointed. Is that correct, Delegate Harbaugh?

**CHAIRMAN AASHEIM:** Does Delegate Harbaugh yield?

**DELEGATE HARBAUGH:** Yes.

**DELEGATE JOYCE:** That's what you would like to see the Constitution read, is that correct, sir?

**DELEGATE HARBAUGH:** I would like to see—Mr. Chairman, I would like to see the superintendent appointed by the Board of Education, but I will not withdraw my motion because I believe that there's no point in it. I do not think that the superintendent should be mentioned in the Executive article.

**CHAIRMAN AASHEIM:** Will you please answer the question and confine yourself to the answer?

**DELEGATE JOYCE:** All right, well, I move then, Mr. Chairman, that we pass consideration of Section 1 with the right to go back to it and that we take up Section 2, (Inaudible)...motion for Mr. Harbaugh's motion.

**CHAIRMAN AASHEIM:** You have a substitute motion by Mr. Joyce to pass consideration of Section 1. As many as are in favor of the motion—

Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman, I really don't see any point in delaying this process. I think that regardless of whether you work through this issue on Section 1 or Section 2 makes very little difference. I would urge you to defeat this amendment so that we can—or, this motion—so that we can go ahead and discuss the issue that is before us. The same issue will be before us as we consider Section 2, and I see no point in delaying the debate on this until then.

**CHAIRMAN AASHEIM:** The discussion centers on the motion of Mr. Joyce to pass consideration of Section 1. Any further discussion on that motion?

Mr. Heliker.

**DELEGATE HELIKER:** Point of order. I don't believe that a motion to pass is a proper motion.

**CHAIRMAN AASHEIM:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** (Inaudible) Chairman, the vote that we took before we recessed was on the motion by Mr. Wilson. Just exactly what was that vote for? Was that to pass—was that to adopt Section 1 under the minority report?

**CLERK HANSON:** It was to amend Section 1, subsection 1 so that it now reads as the minority report reads. Mr. Harbaugh then made a motion to strike the language, "superintendent of public instruction", from that and that's now the pending motion.

**CHAIRMAN AASHEIM:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Then we still are on Section 1, subsection 1, of the minority report.

**DELEGATE JOYCE:** (Inaudible)...Delegate Harbaugh go ahead, I'm sorry. I'll withdraw it.

**CHAIRMAN AASHEIM:** Mr. Joyce has withdrawn his motion so the discussion will continue on the motion by Mr. Harbaugh to delete "the superintendent of public instruction" from Section 1.

Mr. Driscoll.

**DELEGATE DRISCOLL:** Mr. Chairman, I rise in opposition to Mr. Harbaugh's motion. In 15 or 20 years of school administration in the State of Montana, and successfully, I hope, I have dealt with a number of elected chief school officers, both Democrat and Republican, I have found them highly responsive to the public will, highly responsive to the public need, and all in all very capable persons. As to policy determination, this whole assembly is well aware that roughly twenty-five to thirty million dollars in federal funds come into our state each year for distribution to educational purposes and for most of these our chief school officer has jurisdiction. She has done this job remarkably well, remarkably fair, in the best interests of the people. I would also like to remind the women's lib people in our gathering that our chief school officer is the only woman in that position in the United States.

**CHAIRMAN AASHEIM:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. Chairman, I rise at this point in opposition to Mr. Harbaugh's amendment. The Superintendent of Public Instruction has great responsibilities in the management of the largest single state activity, education. This includes serving as policymaker, administrator, researcher, planner, decision-maker, evaluator, advisor, interpreter, regulator, coordinator, and leader in the innumerable matters relating to contemporary public education. She administers more than 65 state and federal programs, with a budget of over fifty million dollars annually. Approximately 165 people are employed in this office. As secretary of the Board of Education and member of the Land Board—and I want you to note that—and member and coordinator of a large number of local, state and federal programs, the superintendent plays a vital role in coordinating many levels of educational activity in the state. This office is the primary representative of education in Montana to the Legislature. This office coordinates regional and national programs through such things as Department of HEW, BIA, OEO, and so forth. This office therefore needs the contact and mandate of the people in carrying out these very important tasks. Let's look at the elective process. Twenty states have elected superintendents. Eleven have elected state boards. The majority, then, of the states see the elective process as an important part of educational administration. The trend, as Mr. Harbaugh noted, is towards appointment but the situation in Montana is unique and the elective superintendent has served this state very well. The education committee voted 8 to 1 for the election of the state superintendent. Education is not a normal state function. The unique status of education and the visibility which has been accorded it clearly dictates to me the continuance of an elective office. That status is prerequisite to the typical procedural functions of government. It provides leadership, growth, service, imagination—all of these are encouraged by the elective process; whereas, appointment tends to stifle these. The election of the superintendent means that education will continue to hold a top priority in the minds of the people. Appointment would mean that accountability for education would shift to the appointing official, rather than the superintendent, and I daresay this probably would be the Governor. The Governor could not realistically be held responsible for all the appointments he is to make, thus responsibility tends to disappear. The Governor and superintendent at the present and the proposed articles we're going to bring up in education, tend to balance one another in educational decision-making. Now, what about the candidates we've had in this state running for this office in the past and have been elected? They have done a very good job. We have one of the best educational systems in the United States. In 1968, for example, the candidates were a legislator, a high school teacher, an associate professor at the University of Montana, an experienced public educator, and a former teacher who later returned to the University of Montana. We have had extremely well-qualified people who have served as superintendents. The residency requirement insures that superintendents that are elected will be a person—they will be first, people intimately acquainted with Montana's unique educational, social, cultural and economic conditions, and who share the aspirations of its citizens. Now, let's look at this business about politics playing a part of the process. I submit that politics plays as much or more a part in appointment as it does in election. Now, look at this business about the appointed superintendent. More than likely, she's going to be appointed by a board. Now, what's this board going to be made up of? Appointed people? Are you going to eliminate the political process there? Or, is she going to be appointed by a board that's elective? Or will she be appointed by the Governor, the most political animal in this state—I'm not referring to the present Governor—all Governors. Got to watch that one. (Laughter) I submit if it is by an elective board, this is the worst possible thing we could have, because who is going to run for that elected board? Think of it—without pay, a statewide campaign. You're going to get people that are going to run because they're out to get someone. Or, are they being financed by someone or have enough money to finance it for themselves? But I don't think that's going to be the best way to get a superintendent. Whereas, the elective process of the state superintendent insures that the superintendent will have to keep in close contact with the people's educational desires. This is a positive aspect of the campaign process. A competent superintendent who is elected will have an office staff, capable of running things during the superintendent's absence in a campaign. We forget about that. All right, what about her working with the Legislature? She has to do this—or he, as the case may be. An elected superintendent can approach each other—that is to say, legislators—on equal grounds, all elected officials for that matter, to represent the educational interests of the state from a position of strength. Election adds stature to the office and thus to education. Election encourages accessibility. Election encourages imagination and leadership over caution. Election removes the superintendent from the bureaucratic syndrome of excessive caution and subservience to superiors. Election has worked well in Montana. Montana has special unique needs and it has a history of successful elected superintendents and the elected superintendent is the best way for Montana. Thank you.

**CHAIRMAN AASHEIM:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, I rise to oppose Mr. Harbaugh's amendment, and for many of the same reasons that Mr. Champoux has given. I believe that we should maintain the state Superintendent of Public Instruction as an elected office. I think all of us in this room can remember through the years, the 1950's and the 1960's, when we have had very difficult battles between the executive leadership of the State of Montana and the state Superintendent of Public Instruction, largely over how much money was going to go to education. And I submit that if the state Superintendent of Public Instruction had been an appointed official, those battles would never have been made because they would not have lasted in those positions; they would have been subservient either to an appointed board or to the elected Governor of the State of Montana. I think that an elected official, or an elected state Superintendent of Public Instruction is a highly visible person who must answer to the people. There's no other job in the State of Montana, in state government, I think, that handles a more important task for our state than the state superintendent in the instruction of our children and in the laying down the guidelines, the handling of all the enormous amounts of money that goes through the state superintendent's office, and setting the kind of education that we want in this state. And I've heard it already said in this assembly many times that we do have a fine educational system in the State of Montana. I believe that. And this has happened under elected state Superintendents of Public Instruction. I think also—I have an amendment I want to make myself a little later in case Mr. Harbaugh's motion is deleted, so I shall say no more at this time. But I strongly oppose Mr. Harbaugh's amendment to delete the state superintendent as an elected official.

**CHAIRMAN AASHEIM:** Mr. Foster

**DELEGATE FOSTER:** Mr. Chairman, and fellow delegates, after three educators, I think it's time that a noneducator arise. First of all, I'd like to rise in support of Mr. Harbaugh's motion. Secondly, I would like to ask the Chairman of the Education Committee, who has reported that their committee report has been completed to this assembly, a couple of questions which I think relate to this question of an elected superintendent. Mr. Champoux, would you yield to a question?

**DELEGATE CHAMPOUX:** I will yield, Mr. Foster.

**CHAIRMAN AASHEIM:** Mr. Champoux, will you yield to a question?

**DELEGATE CHAMPOUX:** I will yield.

**DELEGATE FOSTER:** Mr. Champoux, in your committee report, are you going to report to this body that we retain "boards"—"board or boards"—in the Constitution for education?

**DELEGATE CHAMPOUX:** Mr. Foster.

**CHAIRMAN AASHEIM:** Mr. Champoux, will you yield to that question?

**DELEGATE CHAMPOUX:** Yes, I will. Is your question, now, whether we're going to have "boards"—"boards"—or is it something relative to the elective versus the appointive process? What's...(Inaudible).

**CHAIRMAN AASHEIM:** Mr. Foster, may I ask, does this pertain to the motion before the assembly?

**DELEGATE FOSTER:** Yes, it does, Mr. Chairman. The reason it pertains is because if in fact this is the only office that the Education Committee is going to recommend, it has some bearing as to whether the office is going to be elective or not.

**CHAIRMAN AASHEIM:** All right, you may answer if you so wish.

**DELEGATE CHAMPOUX:** Insofar as the Education Committee is concerned it voted 8 to 1 for the elective process. In the committee report proposal which is just coming out—it will be on your desk some time this afternoon—there will be a board, a state Board of Education with two sub-boards, a Board of Regents and a Board of Public Education, and the elective official is provided in there. However, it also states that the committee reserves the right to go back and rediscuss this if you should go for either an appointive position or the other proposal that was submitted by the Executive Committee which is an appointive-elective up to the Legislature.

**DELEGATE FOSTER:** Thank you, Mr. Champoux. Mr. Chairman, my point is that it's very difficult for me to see the reason for an elective state Superintendent of Public Instruction, and also constitutional board or boards of education. When I was campaigning there was a strong sentiment in my area for nonpolitical education, if you will. People felt that the partisan issue should not enter into education. The consensus of the electorate in my area was that, in fact, we should have a large board or boards, whether it be one or divided into two portions, which would, in fact, have long terms and be relatively free from the political winds of Montana over short periods of time; and that, in fact, the superintendent should serve at the pleasure of that long-standing board. It's difficult for me to see how an elective official can work effectively, harmoniously and responsibly to a board if that board, in fact, has constitutional status. Now, I personally am not necessarily opposed to an elective superintendent but I feel that if you're going that direction then, essentially, you're making it a political office. And that superintendent should then be able to set the policies of education for the state and not be responsible to a board to override them. If you're going to have a board which is going to set the policies of education for the state, it seems inconceivable that we should elect an official who is supposed to be then responsible to the people to meet the same need. In short, it seems to me that the basic concept of elective offices is such that if we're going to have an elected superintendent, then we're going to have conflict with boards, and I personally feel that we would be much better to leave the superintendent to serve at the pleasure of the Board of Education and, in fact, that this superintendent should be selected by that board. Thank you, Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. James.

**DELEGATE JAMES:** Mr. Chairman, we voted down a people's advocate yesterday, I believe, but we do have a people's advocate in the state Superintendent of Education on the highest plane and sense. Therefore, I vote to keep this office elective and in opposition to Mr. Harbaugh's amendment.

**CHAIRMAN AASHEIM:** Mr. Harrington.

**DELEGATE HARRINGTON:** (Inaudible)...amendment. I feel we talk about taking the state superintendent out of politics by making her appointive. I say we're going to make a political football out of her, and the past, I think, can justify this. At times when the state superintendent had to stand up for education, she did, against other outside pressures and, of course, as Mr. Blaylock has already stated, I won't go into this any further. I do feel the one way that we can preserve the education system in Montana is to elect a superintendent, and I could also like to come back to the point of Mr. Foster saying that there will be conflict between the board and the superintendent. There is a Board of Education today. There is an elected superintendent. There does not seem to be any conflict. There is not—the conflict has not come out, so I'll let my statement stand on that. Thank you.

**CHAIRMAN AASHEIM:** Mr. Burkhardt.

**DELEGATE BURKHARDT:** (Inaudible)...a member of the Education Committee, Mr. Chairman, I would rise in opposition to Mr. Harbaugh's amendment. I would support our Chairman, Rick Champoux, in much that he said. It seems to me that as we listen day after day to issues that are related to this particular matter, there were arguments that were presented on both sides of it. And it seemed that the principles involved could be argued right down to the last conclusion almost identically; and then you made a kind of an emotional leap and went with what your emotional commitment may or might not be. This is not necessarily bad. I think efficiency is one goal. I think freedom is another goal and sometimes the two come into a bit of conflict, and you need to make a judgment, a value judgment in that area. The committee chose for independence in freedom, in consistent kind of accountability, too. There's a story about a taxi driver in St. Louis who reported, as one learns much wisdom from taxi drivers, but in a conversation he said, "Sometimes you have to put aside your principles and do the right thing." Thank you. (Laughter)

**CHAIRMAN AASHEIM:** Mr. Noble.

**DELEGATE NOBLE:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Noble.

**DELEGATE NOBLE:** I rise in opposition to Mr. Harbaugh's motion. The committee went on record 8 to 1 against it.

**CHAIRMAN AASHEIM:** Mrs. Cross.

**DELEGATE CROSS:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mrs. Cross.

**DELEGATE CROSS:** The Superintendent of Public Instruction has a very important post as a member of the Land Board. Now, the Land Board, as I understand it, determines what is done with the school trust lands and a great deal of money is realized from these. I would like to ask Mr. Harbaugh a question, if I may, concerning this.

**CHAIRMAN AASHEIM:** Will Mr. Harbaugh yield?

**DELEGATE HARBAUGH:** I yield

**DELEGATE CROSS:** Mr. Harbaugh, have you considered the position of the state Superintendent of Public Instruction and what it will do to her independence in making decisions on this board, and how the land would be managed under an appointive official?

**DELEGATE HARBAUGH:** Yes. (Laughter)

**CHAIRMAN AASHEIM:** Mr. Conover.

**DELEGATE CONOVER:** As a member of the Education Committee, I rise in opposition to Mr. Harbaugh's motion. Mr. Chairman, I would like to ask Mr. Harbaugh another question.

**CHAIRMAN AASHEIM:** Mr Harbaugh, will you yield?

**DELEGATE HARBAUGH:** Yes.

**DELEGATE CONOVER:** Mr. Harbaugh, wouldn't—if she is appointive, wouldn't this give the power to the Governor of two votes on that Land Board?

**DELEGATE HARBAUGH:** No.

**DELEGATE CONOVER:** How do you arrive at that?

**DELEGATE CONOVER:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Conover.

**DELEGATE HARBAUGH:** In the first place, I would not propose to have the superintendent appointed by the Governor. I would propose that the superintendent be appointed by the Board of Education. That would be taken care of under the Education Article. The Land Board at present is made up of four persons, three of those persons would be elective and the superintendent would be appointed.

**DELEGATE CONOVER:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Conover.

**DELEGATE CONOVER:** We went in some lengthy discussion on our Land Board. Actually, we took one off, then we put him back on, and I want to say to you that our school lands, as I call them, and you call them public—private lands, is very sacred to our state. We are one of the two states left in the nation who has reserved all of our school lands and I think we better take a look at this, and I'm proud that we have reserved them. Thank you, Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, I want to ask you guys to ease up on my friend, Gene Harbaugh. I think it's perfectly apparent that his is the only voice raised in his own behalf and it's like sending in the dive bombers and the tanks and everything, when a fly swatter would do it. (Laughter) No offense, Gene. Let's just vote on this issue. I think it's pretty apparent how the house feels.

**CHAIRMAN AASHEIM:** Mr. Barnard, do you want the floor? Mr. Barnard?

**DELEGATE BARNARD:** Mr. President—

**CHAIRMAN AASHEIM:** Mr.—Mr.—

**DELEGATE BARNARD:** I would just like to rise in opposition to Mr. Harbaugh's motion. I have been in this—in education affairs in some form or another since 1945, and even before that and I've worked with various state superintendents in educational affairs through all of that time, and I have never saw one state superintendent set aside the welfare of the school children of the State of Montana for—because of political issues.

**CHAIRMAN AASHEIM:** Miss Speer.

**UNIDENTIFIED DELEGATE:** Mr. Chairman.

**DELEGATE SPEER:** Thank you.

**CHAIRMAN AASHEIM:** Miss Speer has the floor.

**DELEGATE SPEER:** Thank you. Mr. Chairman, may I—will Mr. Champoux yield to another—

**CHAIRMAN AASHEIM:** Will Mr. Champoux yield?

**DELEGATE CHAMPOUX:** It's always dangerous to yield to the females in that end of the floor, but I will. (Laughter)

**DELEGATE SPEER:** Mr. Champoux has said that the Education Committee has in mind to bring out a proposal for a Board of Public Education and a Board of Higher Education. My question is, Mr. Champoux, what is the function as you see it then, of the Board of Public Education? If the Superintendent of Public Instruction is elected as the chief school officer of the state of public education, what role does the board play? Does it have any function?

**DELEGATE CHAMPOUX:** Mr. Chairman, I don't think that's germane to the discussion at this point as whether she's to be kept in Article I.

**CHAIRMAN AASHEIM:** Well, the Chair will have to say he did not hear the question. But, if he does not want to answer, I guess that's his privilege, Miss Speer. But I would recommend, Miss Speer, that you get a flag back there so we can see you. I'm sorry.

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, what I would like to do is resolve this issue orderly and I want to just speak in this situation. It seems to me that there are three possibilities. Number one, to require the appointment of the superintendent; number two, to require her election; number three, to leave it to the Legislature in the future to decide between one and two. So, the question is, how are we going to meet this issue? Now, I'm disposed to vote against Mr. Harbaugh's motion to take it out and meet the question under Section 2, but he doesn't want to do it that way, so I just don't know how we can get to the issue because a vote against Mr. Harbaugh may still be for leaving it to the Legislature. So I don't know how we can vote on this thing—that's my problem.

**CHAIRMAN AASHEIM:** I believe, Mr. Joyce, we can settle it by voting.

Mr. Davis.

**DELEGATE DAVIS:** All I want to do is vote, too, unless someone wants to keep talking. But I want to appeal to my fellow delegates. We've been here since noon on Section 1. You all know exactly how you're going to vote. They're going to elect the Superintendent of Schools, whether you do it tonight at 11:00 or we vote on it right now, so let's do it.

**CHAIRMAN AASHEIM:** The question now arises—Mr. Harbaugh, do you want to close? You may close.

**DELEGATE HARBAUGH:** (Inaudible) Thank you, Mr. Chairman. I guess you know how the Education Committee feels about this. I think, though, that it's important to know what the body of the Convention feels, and I'd like to make some response to some of the arguments that have been raised. First of all, it's been said that—it's been pointed out that the superintendent handles in the excess of 50 million—50 thousand dollars annually. Now, I think this is exactly one reason why we should not vest this in an official—in one official. I think that to remove this office from politics is in the best interests of the administration of those funds. Mr. Champoux admits that education is a unique function in the state. As to the question regarding the Land Board, it seems to me that that's not really an issue, whether the superintendent is elected or appointed. You will have three elected officials on the Land Board anyway. I cast no dispersion on the present superintendent. I think she has done a fine job, and I would not want this to be construed in that way. I think perhaps we are very fortunate in having had good superintendents, but there is no guarantee that we will continue to be fortunate. The point was brought out that there is no conflict at present between the superintendent and the Board of Education. There's a very obvious reason for that. They spend only about 5 percent of their time on matters of lower education, with the result that, really, the board is just a rubber stamp. And I submit to you that if you elect the superintendent, there is no point at all in having a lower Board of Education. The elective process insures that the superintendent will be in touch with the people, it is said. That's true, but I wonder. Whenever that official spends in excess of fifteen to twenty thousand dollars to be elected for the office, what sort of contact that is—if perhaps that contact might be called strings. I urge you to strike this office from the Executive Article and allow it to be written in the article on Education, under the management of education, where I think it properly belongs.

**CHAIRMAN AASHEIM:** The question now arises on the motion of Mr. Harbaugh to amend Section 1, subsection 1—to strike the words "superintendent of public instruction" from Section 1, subsection 1. As many as are in favor of the motion will say Aye.

**DELEGATES:** Aye.

**UNIDENTIFIED DELEGATES:** Roll call.

**CLERK HANSON:** Roll call, Mr. Chairman.

**CHAIRMAN AASHEIM:** I haven't seen five people stand yet.

(Delegates stood)

**CHAIRMAN AASHEIM:** All right, a roll call vote has been called. As many as are in favor of the motion will vote Aye on the board. As many as are opposed will vote No. Has every member voted?

(No response)

**CHAIRMAN AASHEIM:** Does anyone want to change his vote?

(No response)

**CHAIRMAN AASHEIM:** The clerk will close the ballot.

| | |
|---|---|
| Aasheim-Chairman | Absent |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Absent |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Absent |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Absent |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Absent |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK SMITH:** Mr. President, 22 voting Aye, 72 voting No.

**CHAIRMAN AASHEIM:** 22 having voted Aye, 72 voting No, the motion is lost. Are there any further amendments to Section 1?

Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, members of the Convention. For the last 3 years up until last month, our present Attorney General has been advocating appointment of the Attorney General, and during that period of time, I couldn't help but agree with him in that regard. The present situation regarding representation of the state legally is in a state of chaos. Many of you will recall the articles which were written earlier this year by Mr. Daniel Foley for the Gazette State Bureau, which outlined some of the many problems inherent in this situation. It is my firm belief that the Governor, as the Chief Executive officer of the State of Montana, has the right to his own legal counsel. And not only should the Attorney General be of the same political party as the Governor, but every attorney representing every agency in the state should also be of the same political party as the Governor so that the Governor can be an effective Governor. By denying the Governor this right, you deny him the right to be an effective Governor, because everywhere he turns where there is an attorney of the opposing party representing the board or agency, he is cut down. All right. The present situation is approximately this. Last year the State of Montana, in addition to the appropriation for the Attorney General's office, spent $223,000 for outside counsel to represent the Governor personally and to represent the Governor on boards. That's a lot of money. Secondly, 38 state agencies had separate counsel outside the Attorney General's office. There's no need for that. We ought to have in Montana an Attorney General that's appointed by the Governor and a staff that is adequate to serve every agency of the state government, that is responsive to that Attorney General and to the Governor. That's all the speech I'm going to make. I have a Committee of the Whole amendment which you all have on your desk which would take care of this situation. It would eliminate the Attorney General from the Executive Article, and in Section 4, subsection 4, it would provide that an Attorney General should be appointed by the Governor—

**CHAIRMAN AASHEIM:** Mr. Cate, would you care to make that—enter the motion now?

**DELEGATE CATE:** I'll enter the entire motion at this time, Mr. Chairman, but rather than myself read it, I would have the clerk read it. All right.

**CHAIRMAN AASHEIM:** (Inaudible).

**DELEGATE CATE:** I would like to finish my comment and then have him read it. All right. Section 4, subsection 4, would be amended to provide that an Attorney General should be appointed by the Governor and shall be the legal officer of the state, and he shall have such qualifications, duties and powers as may be provided by law. Mr. Chairman, I would ask that you have the clerk read the proposed amendment. Thank you.

**CHAIRMAN AASHEIM:** Clerk will read the amendment.

**CLERK HANSON:** "Mr. Chairman, I move to amend Section 1, subsection 1, page 4, of the Executive Committee proposal by deleting the following words and punctuation after the word 'state comma', 'attorney general comma'. Signed: Cate."

**CHAIRMAN AASHEIM:** Mr. Cate, do you want to talk on that subsection amendment, or do you want the whole thing—the whole proposal read?

**DELEGATE CATE:** Mr. Chairman, I think the delegates have before them the entire printed Committee of the Whole amendment. I think they can refer to it themselves. Section 1 is the first section to be dealt with by the amendment, and I do not wish to speak further on it. I would just urge this Convention to do this for the good of the people of the State of Montana. It is something that really needs to be done, and every lawyer will tell you that, if he'll tell you that in honesty. And just about every lawyer here has a conflict of interest here, including myself, because I have one law partner that represents one state agency appointed by the Governor and I have one law partner representing another state agency appointed by the Attorney General. But this is something that really needs to be done. The Governor should have his own attorney, and it ought to be the Attorney General. And we have a chance here to do something that we haven't had a chance to do in 83 years, and we ought to do it for the good of the people and the good of the legal profession in the State of Montana. Thank you.

**CHAIRMAN AASHEIM:** We're now talking about the amendment to subsection 1, page 4, line 9. Any further discussion?

Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Kelleher.

**DELEGATE KELLEHER:** I just call to the attention of the delegates a past political history in the state when Governor Babcock had the present Governor as Attorney General, and I ask you: if you were Governor of this state, how would you like to have as your chief legal officer a man whose primary job was to try to get your job? (Laughter) I mean, these are the realities of life. I mean, how could you accept advice from him? And now the situation is a little bit reversed. We have a Republican Attorney General and a Democratic Governor. And if we're going to be electing all these people that we really should be appointing—all the experts of political science tell us we should be appointing them. I ask you, why don't we have a state coroner? Why don't we elect the chief janitor—put him on the ballot? I mean, if you want democracy, if voting makes people—gives you kicks or something—or you'd think it does—let's elect everybody. All it's going to do is cost money and you're not getting democracy. In conclusion—I can't pass this up—if we did have the parliamentary form of government, this would be no problem. The Governor would be the Chief Executive officer, the leader of this party—

**CHAIRMAN AASHEIM:** Are you on—(Inaudible)—Mr. Kelleher, are you talking about subsection 1?

**DELEGATE KELLEHER:** I'm on the Attorney General, Mr. Chairman. He would be appointed out of this body, and that's why I support Mr. Cate's motion.

**CHAIRMAN AASHEIM:** Any further discussion on subsection 1, page 4?
Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I'm sure Jerry would be disappointed if I didn't oppose this. I would like to not comment on the obvious inconsistency on the incumbent who has changed his position from recommending an appointed Attorney General to one elective as the field of candidates for the governorship narrow. I agree 100 percent with Mr. Cate that the Governor should have legal counsel. He should have a complete and adequate staff, including his legal counsel. However, we're talking here about the chief legal officer of the State of Montana. As a matter of principle, I cannot support changing an elective office to an appointive office. In addition, I'd like to just briefly refer to two situations in the recent past history of Montana where it has been very healthy to have had an elected Attorney General rather than an appointive one. I'm referring to a situation involving school land in the vicinity of Lincoln where the environmentalists, including myself, became quite concerned. Without discussing the merits of that controversy, I submit it would have been very unhealthy to have had an appointive Attorney General whose first allegiance was solely to the Governor, rather than an elective one who represented the interests of the people. In addition, I'll briefly refer to a situation where there was some unsalable liquor in the State of Montana that disappeared from the state warehouse. I submit that, in a situation such as that, the results might not have been quite the same had the Attorney General owed his allegiance solely to his appointor, the Governor, rather than the people of Montana. I therefore oppose the amendment and am in favor of retaining the Attorney General as an elective office.

**CHAIRMAN AASHEIM:** Any more discussion?
Mr. Swanberg.

**DELEGATE SWANBERG:** I rise in support of Delegate Cate's proposal. I do so on the basis that I believe it would greatly strengthen the Executive Department. Our present Constitution states that our Governor is the Chief Executive officer, and I submit for your consideration that that's only a half-truth. The Attorney General is also an executive officer under our practice, and we know the many times he's engaged, for example, in gambling activities and their suppression. This is an executive function. He files lawsuits that have to do with executive matters. Can you imagine a situation more uncomfortable than to have the Governor seek the advice of a Attorney General who is not friendly to his cause? I think that if these two were together, you'd see a much greatly improved Executive Department. And I wholeheartedly support this proposal.

**CHAIRMAN AASHEIM:** Mr. Garlington.

**DELEGATE GARLINGTON:** I would like, Mr. Chairman, to reiterate the views of the committee on this subject. We start out with recognition of the basic fact that the reorganization amendment already vests a great deal of concentrated executive power in the Governor. Under the 20 departments whose heads he is privileged to appoint and remove, he does have a large concentration of that power. If he also had a personal Attorney General, the opportunity—now note this, I say opportunity—some time amongst some people—not referring to the present administration at all—the opportunity for some connivance between the Governor's office and the Attorney General's office, working in concert with this vast appointive power, seemed to us to be, from the viewpoint of theory and political science, an unhealthy condition to create. We felt, therefore, that if the Attorney General's office were in an independent position so that if someone were to find that somewhere up and down the line of the Executive branch some deviation from the faithful performance of duty was occurring, there would be a ready and available source of relief to them, and this we regard as being a proper function of the office of Attorney General, and I would want you all to consider that very closely before you've concluded to make this an appointive office. And then, as a postscript, I am amazed that there are not all these people getting up to wave the flag of allowing the voters to have their choice that we heard all the rest of the day. (Laughter)

**CHAIRMAN AASHEIM:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, will Mr. Garlington yield to a question?

**CHAIRMAN AASHEIM:** —Mr. Garlington yield to a question?

**DELEGATE GARLINGTON:** Certainly.

**DELEGATE BERG:** Would you have the Governor or the Attorney General appoint counsel for the various boards of the 20 departments of government?

**DELEGATE GARLINGTON:** I think the law permits the Executive to do that. This would be the Governor and those boards, bureaus and commissions that are part of the Executive Department. I would not have, if I were constructing it, the Attorney General doing that. Does that answer the question?

**DELEGATE BERG:** Would you yield to another question?

**DELEGATE GARLINGTON:** Certainly will.

**DELEGATE BERG:** Does this eliminate the evil that Mr. Cate referred to in the present system of using private counsel for various boards?

**DELEGATE GARLINGTON:** No. There are—I don't think we ought to get too far afield on this. Ben says "the present evil." So the press has described it in some occasion, and yet I think, as a practical matter, there are many boards who get continuing service at a very relatively low cost with increasing familiarity by the lawyer they have with their affairs and better service through that system than if you had a large pool of assistant Attorney Generals from whom you picked somebody or other to serve the particular board at any time. I suspect it turns out to be a more economical form of legal service, but I don't think we ought to get into that here because, basically, what we're talking about is creating the relationship between the two most important offices in the whole Executive branch, and in theory and, I think, in practice, they should be kept apart.

**CHAIRMAN AASHEIM:** Mr. Siderius.

**DELEGATE SIDERIUS:** Mr. Chairman, I rise to oppose Mr. Cate's amendment for the main and simple reason that the Attorney General also sits on the State Land Board, and I think he should be elected.

**CHAIRMAN AASHEIM:** Mr. Holland.

**DELEGATE HOLLAND:** (Inaudible). Members of the Committee. I want to assure you that even though Mr. Woodahl is in the newspapers, when he was thinking of running for Governor, decided he'd sooner have an appointive Attorney General. And my grandfather feels the same way about the Attorney General's office, and we should elect—(Laughter)

**CHAIRMAN AASHEIM:** Mr. Cate—Mr. Wilson.

**DELEGATE WILSON:** Mr. President.

**CHAIRMAN AASHEIM:** Mr. Wilson.

**DELEGATE WILSON:** I have to rise in opposition to Mr. Cate's proposal. I would submit to the rest of the delegates that we deliberated a long time in our consideraton of this matter, and we came to the conclusion that, inasmuch as the Attorney General was, under reorganization, being delegated a lot more power and we can foresee in the future where he is going to be even delegated more, we thought, in our deliberations and our examination of all the testimony that was presented to us, that he should be an elected official who is responsible to the people and not subservient to some Governor who has appointed him and could appoint him in the future. There are a great many reasons why the Attorney General is the people's advocate that you talked about. He can and will explore any corruption or any illegal manner that is taking place in the State of Montana, both in the Executive, in the county, or in the local government. Therefore, it is the opinion—and it was the unanimous opinion—of the committee that the Attorney General be an elected official.

**CHAIRMAN AASHEIM:** The Chair will sit here till midnight, or stand here till midnight, if you want to belabor this any farther.

Mr. Cate, do you want to close?

**DELEGATE CATE:** Mr. Chairman, I'd like to point out to the committee that in their comments to the Executive Article, they state that the Attorney General prosecutes and defends all litigation in which the state is a party, that he is legal counsel to all state officers and agencies and that, in addition to being—to this, he is the legal adviser of the Governor. All of those statements are false, and everyone here knows it. That's not the truth. The system that we have now is a nice patronage system for the Attorney General, who appoints part of the attorneys representing boards, and a nice patronage system for the Governor, who appoints the rest of them. But it doesn't represent good government and it doesn't result in good government, and we have an opportunity here to do something about it. We're talking about streamlining government, making the Governor more responsible and more effective. And we can do that by giving him his true legal counsel, the Attorney General, as it is in most states, and giving him the power to appoint the staff of the Attorney General and having that staff take care of all the state agencies instead of having 38 different state agencies represented by different counsel—private counsel. That's all I have to say. Thank you.

**CHAIRMAN AASHEIM:** The question now arises on the motion of Mr. Cate that Section 1, subsection 1, of the Executive Committee proposal—by deleting the following words and punctuation after the word "state": "attorney general". As many as are in favor of the motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Opposed?

**DELEGATES:** No.

**CHAIRMAN AASHEIM:** The Noes have it.

Mr. Cate, do you want us to continue with the rest of it? Will you withdraw your motion?

Mr. Cate has withdrawn the rest of the motion. Are there any further amendments to Section 1 of the Executive proposal?

(No response)

**CHAIRMAN AASHEIM:** The question now arises on the motion of Mr. Wilson that, when this committee does arise and report, that Section 1, subsection 1, be adopted as amended. As many as are in favor of the motion will say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Opposed?

**DELEGATES:** No.

**CHAIRMAN AASHEIM:** The motion is carried. Subsection 2—the clerk will read subsection 2.

**CLERK HANSON:** "Section 1, subsection 2: The superintendent of public instruction shall be the chief educational officer of the state and shall have such qualifications, duties, salary, term of office and manner of election or selection as is provided by law." Mr. Chairman, subsection 2.

**CHAIRMAN AASHEIM:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. Chairman, first I'd like to ask, as a matter of parliamentary inquiry—I want to move this amendment—

**CHAIRMAN AASHEIM:** Mr. Blaylock, as a matter of courtesy—I didn't see Mr. Joyce standing. Would you accede to Mr. Joyce?

**DELEGATE BLAYLOCK:** Oh, yes.

**DELEGATE JOYCE:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** I move that when this committee does arise and report, after having under consideration the Executive Article, subsection 2 of Section 1, that it recommend that the same be adopted.

May I speak, Mr. Chairman?

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** I have already read what the committee had to say about the Superintendent of Public Instruction on page 15—the majority of the committee, that is. I will not read it again; I simply call that to the attention of the body, and so I move the adoption of the majority report.

**CHAIRMAN AASHEIM:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. Chairman, as a matter of parliamentary inquiry, would it be permissible at this time then to amend this by striking it and going ahead to make the rest of this section meet the same standards—that is, so it all goes—fits together?

**CHAIRMAN AASHEIM:** Will you explain what you mean by—

**DELEGATE BLAYLOCK:** Well, I wish to—what the intent of my move to amend is to make the state Superintendent of Public Instruction a constitutional officer that will be elected, and not leave it as it is in Section 2, where it can be as provided by law.

**CHAIRMAN AASHEIM:** Will you read Mr. Blaylock's motion—

**DELEGATE BLAYLOCK:** This is on your desks.

**CHAIRMAN AASHEIM:** —Mr. Clerk?

**DELEGATE BLAYLOCK:** It's called "amendment to the executive article."

**CLERK HANSON:** "Mr. Chairman, I move to amend Section 1, subsection 2, by deleting it in its entirety."

**CHAIRMAN AASHEIM:** All right, Mr. Clerk.

Mr. Blaylock, you will now have the floor, and maybe at this time it'd be well for you to explain more thoroughly what you're going to do if this is deleted.

**DELEGATE BLAYLOCK:** The intent of my motion to delete is to go ahead then through the rest of the section, removing those parts of the section which have relegated the office of state superintendent to less than an elective office—to take those out and to reinsert words which will make it an elective constitutional office and also, at the appropriate place, to put in the words which will give the state Superintendent of Public Instruction the—to add qualifications which on—if you have this sheet, in addition to the foregoing qualifications any person to be eligible to the office of Superintendent of Public Instruction shall possess a valid Montana professional teaching certificate. So, it is my intent to—

**CHAIRMAN AASHEIM:** The motion now arises, then, on your motion to (Inaudible).

**DELEGATE BLAYLOCK:** Should I—should be the entire—all of these amendments be put in at the same time, since it is just one purpose, to make the state Superintendent of Public Instruction a constitutional officer who is elected?

**CHAIRMAN AASHEIM:** I believe, Mr. Blaylock, that the proper procedure will be for the discussion to center on your deletion of subsection 2, and if your motion is carried, I think they'll understand the consequences of your motion.

**DELEGATE BLAYLOCK:** Very well, Mr. Chairman. Then I move to delete subsection 2 of Section 1, and I'm not going to give a big speech on each one of these things. Much of what I had planned to say has already been said, and I'm well aware that the mind can endure—or the mind can absorb only what the seat can endureth, so with that, I'll close.

**CHAIRMAN AASHEIM:** The motion then arises on Mr. Blaylock's motion to delete subsection 2.

Mr. Harbaugh.

**DELEGATE HARBAUGH:** I'd like to speak against the motion. I think that it leaves us with a rather—an inflexible approach to this thing if we wanted to change in the future. I'll not belabor the point, but I would like to record my objection to what happened when I was closing on my motion previously, that there was distributed on the desk something from the AFL-CIO which was in the form of a lobby, which I think is prohibited, and I will not challenge the vote, although I think perhaps I could on that basis.

**CHAIRMAN AASHEIM:** Well, I think your point is well taken, Mr. Harbaugh. I think this should be cleared with the Sergeant-at-Arms, and I agree, it is in the form of a lobby, but since it's there, I guess there's nothing we can do about it.

Mr. Wilson.

**DELEGATE WILSON:** Mr. Chairman, I'd like to point out to Mr. Blaylock that in the minority report, I think what he is trying to cover is pretty well taken care of, outside of qualifications. If he'll turn to page 37 and read Section 2, it pretty well covers the point that Mr. Blaylock is talking about.

**CHAIRMAN AASHEIM:** Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, I ask for a point of personal privilege or parliamentary inquiry. I think it has to do with what Mr. Wilson was talking about. According to my notes, we adopted the minority report on page 37, as amended, and I have adopted on roll call by a vote of 53 to 44, and I'm wondering now if actually we aren't discussing the minority report rather than the majority report in which Mr. Blaylock's motion has reference to.

**CHAIRMAN AASHEIM:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, members. The motion was made for Section 1, subsection 1, by the majority report first and then a substitute motion was offered by Mr. Wilson for Section 1, subsection 1. So, we voted on subsection 1 of the minority report. Now, we have moved on to subsection 2, and it was moved by the Chairman of the committee that we adopt subsection 2, and now we are talking about Mr. Blaylock's motion here to amend subsection 2 of the majority report at this time.

**CHAIRMAN AASHEIM:** Does that satisfy your opposition, Mr. Furlong?

**DELEGATE FURLONG:** Mr. Chairman, may I ask Mr. Wilson a question? Will he yield?

**CHAIRMAN AASHEIM:** Will Mr. Wilson yield?

**DELEGATE WILSON:** I yield.

**DELEGATE FURLONG:** Delegate Wilson, was that your intent, to discuss just Section 1, subsection 1, or did you move to adopt the whole minority report?

**DELEGATE WILSON:** We were talking about Section 1.

**DELEGATE FURLONG:** Thank you.

**DELEGATE WILSON:** We adopted Section 1. I just want—

**DELEGATE FURLONG:** Mr. Chairman, I'm satisfied. Thank you.

**CHAIRMAN AASHEIM:** For your information, the motion was Section 1, subsection 1. The transcript says so, so the motion is now in order to continue the debate on subsection 2 and Blaylock's motion is in order.

Mr. Davis.

**DELEGATE DAVIS:** Mr. Chairman, will Mr. Blaylock yield to a question?

**CHAIRMAN AASHEIM:** (Inaudible) yield, Mr. Blaylock?

**DELEGATE BLAYLOCK:** Yes.

**DELEGATE DAVIS:** Mr. Blaylock, if you were to withdraw your motion to delete and I were to make a substitute motion to adopt Section 2 of the minority, wouldn't we be getting the same place and be moving along better?

**DELEGATE BLAYLOCK:** Just a minute, Carl.

**CHAIRMAN AASHEIM:** Restate your question, Mr. Davis.

**DELEGATE DAVIS:** My question were: If he were to withdraw his motion to delete Section 2 of the majority and I were to make a substitute motion to adopt Section 2 of the minority, wouldn't we be proceeding in line with our thinking? Would you do so, please.

**DELEGATE BLAYLOCK:** I think so, Carl. Yes, I think we'll have to make some other amend—

**CHAIRMAN AASHEIM:** Let's ask questions through the Chair and—

**DELEGATE BLAYLOCK:** Excuse me, Mr.—

**CHAIRMAN AASHEIM:** Now, are we talking about subsection 2, Mr. Davis, or are you talking about Section 2?

**DELEGATE DAVIS:** Subsection 2 of Section 1.

**CHAIRMAN AASHEIM:** You're asking him to withdraw subsection 2 of Section 1—

**DELEGATE BLAYLOCK:** Of the majority report, Mr. Chairman.

**CHAIRMAN AASHEIM:** Was that—

**DELEGATE BLAYLOCK:** He is asking me to withdraw subsection 2 of Section 1 of the majority report, and I withdraw it. I withdraw my motion.

**CHAIRMAN AASHEIM:** The motion is then withdrawn.
Mr. Davis.

**DELEGATE DAVIS:** Mr. Blaylock having withdrawn his motion to delete subsection 2 of Section 1 of the majority report, I make a substitute motion that we adopt subsection 2 of the minority report at this time.

**CHAIRMAN AASHEIM:** The motion then arises on Mr. Davis' motion to adopt subsection 2 of Section 1 of the minority report.
Mr. Wilson.

**DELEGATE WILSON:** Mr. President.

**CHAIRMAN AASHEIM:** Mr. Wilson.

**DELEGATE WILSON:** I move, as a substitute motion, that to be inclusive of Section 2, 3 and 4 of Article I on the minority report. I do this to—

**CHAIRMAN AASHEIM:** Will you restate that, Mr. Wilson?

**DELEGATE WILSON:** Pardon?

**CHAIRMAN AASHEIM:** Will you restate that motion, please.

**DELEGATE WILSON:** A substitute motion to Mr. Davis' motion that we include Section 3, Section 4 in this motion of the minority report and that we adopt the same.

**CHAIRMAN AASHEIM:** The motion by Mr. Wilson has the effect of amending Mr. Davis' report by adding subsections 3 and 4. Is that correct, Mr. Wilson?

**DELEGATE WILSON:** This is right.

**CHAIRMAN AASHEIM:** Mr. Wilson.

**DELEGATE WILSON:** I think this would simplify matters, avoid time-consuming debate and move us further along in our deliberations.

**CHAIRMAN AASHEIM:** Mr. Davis.

**DELEGATE DAVIS:** Mr. Chairman, I would support that motion, since they are identical to the majority report, and think we could expedite the matter by voting on subsection 2, 3 and 4 and adopting them, of the minority, at this time.

**CHAIRMAN AASHEIM:** You know, the audio is very poor here. I don't know if it's the noise, but will you restate your motion, Mr. Davis?

**DELEGATE DAVIS:** I'm sorry, Mr. Chairman. I just merely said I would support Mr. Wilson's amendment to my motion that we adopt subsection 2, 3 and 4 of the minority, as they are the same as the majority.

**CHAIRMAN AASHEIM:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, I feel I am obliged to explain to the Convention the significance in subdivision 2 of the majority report, which would be deleted by this motion on the floor. Mrs. Colburg having run—won reelection, it probably is moot in some ways to do this, but this Constitution is supposed to live for a long time, and the majority report, under Section 1, subdivision 2, contains a flexible plan for the long-range future, and I would hope that we would not simply bypass it because of reelecting Mrs. Colburg. The fact is that the educational situation in Montana is in somewhat of a morass. We have not yet seen the report of the Education Committee, and our informal conversations with that committee indicate that it has had considerable difficulty in formulating a plan. This is because the whole educational structure has not been well set up in the past. The Board of Regents or Education, so-called, does not have very good counsel and guidance. There is considerable doubt and ambiguity as to whether the Board rules the roost or whether the superintendent rules the roost. And that is why we reported frankly that they settle it by a system of mutual forebearance. She goes to the high school in the elementary function; the Board of Regents goes to the other; and they kind of don't—conflict. In the ongoing future it seemed to us that there might well come a time when the educational pattern in Montana ought to be under one concentrated source of authority, and that raises the question of how an appointed board and an elected official can function together. The solution that we found to it we drew from the new Constitution in the State of Illinois, and it provides that the chief educational officer can be either elected or selected by the Legislature, with qualifications defined by the Legislature, and this makes it possible over the next 50 years for Montana to keep its educational pattern consistent with the current demands upon it as the years unfold. And I simply want all of you to be aware of the fact that in deleting subsection 2 of paragraph 1 of the majority report, you are destroying the element of future flexibility that it represents. And if this is what you want to do, because you're determined to elect Mrs. Colburg, then that's all right, but I would not be happy in my conscience if I did not bring this out—that here is a means of adjusting to the future that we think ought to have considerable constitutional appeal.

**CHAIRMAN AASHEIM:** (Inaudible).

**DELEGATE FELT:** Mr. Chairman, the motion to adopt subsection 2, 3 and 4 of the minority report is before us, and I rise in support. It is my recollection of our rules that we are to take these things up subsection by subsection, so that if any one member objected to dealing with subsections 2, 3 and 4 together, they could prevent it. But, unless someone does object, we treat it as a suspension of the rules, and so I will so treat it since no one has raised any objection. I believe that the question of how to handle this office, while it did not happen to meet with my own personal views, has been pretty well settled, and in the interests of moving along, I think we should accept the three subsections of the minority report, and I therefore support the motion before us.

**DELEGATE CHAMPOUX:** Mr. Chairman, fellow delegates. I rise in opposition to the majority report, and I'm in favor of the minority report. I stand at this point not as a dive-bomber, but as a duck. Now, we haven't had, as Mr. Garlington has—that's, I think, a personal observation—had difficulty in forming our report, as I see it. Now, leaving the election or selection process to the Legislature to provide by law, I believe, is inconsistent with the constitutional provisions accorded other state executive officials. Why single out this one official, with perhaps the most important job in the state. Now, the method proposed would result in enormous instability, and this is what I see as the key weak point to this whole proposition in the leadership provided for a vital state function, education. The method of selection could be altered at any time by the Legislature. Perhaps the office would be dependent on the majority one political party or another possessed in the Legislative Assembly at a given time. And I submit, in the future, if we accept this majority plan, that we're going to see time and again this office changed from elective to appointive. Can you just imagine, if you have a Republican Governor—and I'm not picking out any particular party here—if you have a Republican Governor pretty much appointing all the boards and directors with a majority of Republicans in the unicameral Legislature, and then he decides that he doesn't like the Democratic state Superintendent of Public Instruction. He goes to the Legislature, gets the appointive process, and she's out. The next time we get in, we have perhaps the opposite of that. This eventuality could be very harmful, I believe, to Montana education. Any method of selection could be provided also, if you note this majority report. We could have appointment by the Governor. Now, if we get appointment by the Governor, does she still sit in the Land Board? And somebody mentioned earlier that the Governor wouldn't have two votes. That would provide him with two votes in the Land Board. If she's appointed by the appointed state Board of Education, I submit the Governor still has two votes in that Land Board. Or is she going to be appointed by the Board of Public Education, by the Board of Higher Education, by the Legislature itself? Is that removing it from politics? What we have here, then, is a multitude of undesirable possible alternatives. Such a proposal, therefore, would place an important state function in jeopardy. It would deny education priority as an important responsibility of the state and put any elected or appointed chief state school officer in an untenable position. The proposed method would strip away certain important basic protections now provided for the people, in their interest. For instance, the state Land Board. The proposed constitutional provision does not prescribe any definite term of office either for the superintendent. At any time, then, the Legislative Assembly could change the law, thus either shortening or lengthening the term of office or providing for election or appointment. I submit that this is not flexibility for the future for the State of Montana insofar as education is concerned, but chaos.

**CHAIRMAN AASHEIM:** Mr. Martin.

**DELEGATE MARTIN:** I support the position taken by Delegate Garlington, and I would say that if we're thinking about education, the fundamental thing that we should think about is what's best for the child, not what's best for the teachers and not what's best for those in power in the educational system, and I want to tell you that the power structure around in the Legislature in Montana not too many years ago was in the big corporations, but today the power structure rests with the educational organizations and, as indicated by this, by the AFL and CIO. I have nothing against labor and its power, nothing against the Montana Education and its power, but I would think that the time might come when we would want to think in terms of what's best for the child and what's best for the student, rather what's best for some power organization.

**CHAIRMAN AASHEIM:** Anyone else want to talk on the—Mr. Wilson.

**DELEGATE WILSON:** Mr. President.

**CHAIRMAN AASHEIM:** Mr. Wilson.

**DELEGATE WILSON:** I do not want to question the thinking of our distinguished committee members, Mr. Garlington or Mr. Martin, but if my memory serves me correct, we voted on Mr. Harbaugh's question as to whether this would be a constitutional office or not, and I think it was decided at that time that it would be a constitutional office. Therefore, I move you, Mr. President, that we should expedite things and move along and adopt the items that we have suggested in the minority report—sections.

**CHAIRMAN AASHEIM:** The question then arises—now you may challenge the Chair on this—but Mr. Davis made the motion to adopt subsection 2 of Section 1, amended by Mr. Wilson to adopt subsection 3 and 4. Do you wish to vote on all at the same time? Mr. Davis, is that all right with you?

**DELEGATE DAVIS:** Yes.

**CHAIRMAN AASHEIM:** The motion then arises on the original motion to adopt subsection 2, 3, 4 of Section 1 of the minority report of the Executive Committee proposal. As many as are in favor, say Aye.

**DELEGATES:** Aye.

**DELEGATE HARLOW:** Roll call.

**CHAIRMAN AASHEIM:** A roll call vote has been requested. As many as are in favor of the motion, vote Aye on your boards. As many as are opposed will vote No.

Has everyone voted?

(No response)

**CHAIRMAN AASHEIM:** Does anyone want to change his vote?

(No response)

**CHAIRMAN AASHEIM:** The clerk will record the vote.

| | |
|---|---|
| Aasheim-Chairman | Absent |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Absent |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Absent |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Absent |
| Furlong | Aye |
| Garlington | Nay |
| Graybill | Absent |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |

| | |
|---|---|
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Absent |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Nay |
| Studer | Absent |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 61 delegates voting Aye, 31 voting No.[3]

**CHAIRMAN AASHEIM:** 61 having voted Aye, 31 having voted No, the motion has carried. Mr. Kelleher.

**DELEGATE KELLEHER:** I accidentally pushed Mrs. Eck's button. I did not vote on my own button, so where Mrs. Eck is on that printout would you please write in Kelleher and show Mrs. Eck as absent? (Laughter)

**CHAIRMAN AASHEIM:** I believe that's a penitentiary offense. (Laughter)

**DELEGATE KELLEHER:** Thank you.

**CHAIRMAN AASHEIM:** I think that this is something that we must guard against—this sort of practice. Now, I'm serious. This is absolutely forbidden in the rules. It may not be a penitentiary offense, but it's an offense against the body.

I am ready for a motion that subsection 2, 3, 4 of the minority report be adopted—

**CLERK HANSON:** That when this committee does arise and report.

**CHAIRMAN AASHEIM:** When this committee rise and report, yes.

**DELEGATE BABCOCK:** As a point of order, could we just take that vote over so that Mr. Kelleher could vote in his own chair?

**CHAIRMAN AASHEIM:** The request has been made that we cast our votes again, and I think the request shall be granted. Will you please vote from your own chair? I shall restate the motion. The motion is to adopt subsection 2, 3 and 4 of Section 1 of the minority report of the Executive Committee proposal. As many as are in favor will vote Aye on the board, and those who are opposed will vote No.

Has everyone—does anyone want to change his vote?

(No response)

**CHAIRMAN AASHEIM:** The clerk will tally the vote.

| | |
|---|---|
| Aasheim-Chairman | Absent |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |

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[3] [Voting machine record shows 32 voting No. Ed.]

| | |
|---|---|
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Absent |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Absent |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Absent |
| Furlong | Aye |
| Garlington | Nay |
| Graybill | Absent |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Absent |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Nay |
| Studer | Absent |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 61 delegates voting Aye, 32 voting No.

**CHAIRMAN AASHEIM:** 61 having voted Aye, 32 having voted No, the motion is carried. The motion will now be accepted by the Chair that when this committee does arise and report.

Mr. Wilson.

**DELEGATE WILSON:** Mr. President, I move that when this body rises to report, that it adopt the minority report of Section 1, 2, 3 and 4.

**CHAIRMAN AASHEIM:** You mean subsection 1, 2, 3 and 4 of Section 1.

**DELEGATE WILSON:** Right.

**CHAIRMAN AASHEIM:** All in favor, say Aye.

**DELEGATES:** Aye

**CHAIRMAN AASHEIM:** Opposed?

**DELEGATES:** No.

**CHAIRMAN AASHEIM:** Motion is carried. Motion is carried. The clerk will now read Section 2.

**CLERK HANSON:** "Section 2, Election; subsection 1: The governor, lieutenant governor, secretary of state, attorney general and the superintendent of public instruction, if his election is provided by law, shall be elected by the qualified electors of the state at a general election held and finally determined as provided by law." Mr. Chairman, subsection 1, Section 2.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, in view of the action of the committee, I'm going to propose—what page is the minority?

**CHAIRMAN AASHEIM:** Page 17, Mr. Joyce.

**DELEGATE JOYCE:** I'm going to move that, instead of the majority report, that subsection 2 of the minority report that appears on page 37 be adopted and withdraw the majority report to subsection 1—Section 2, I should say. We're on Section 2, is that right, Mr. President?

**CHAIRMAN AASHEIM:** That's right, you're on Section 2.

**DELEGATE JOYCE:** And we've read the majority report, and I therefore move to withdraw the majority report to Section 2.

**CHAIRMAN AASHEIM:** It has been withdrawn. And your motion then is to adopt Section 2 of the minority report? Subsection 1 of the minority report?

**DELEGATE JOYCE:** (Inaudible) 1, right.

**CHAIRMAN AASHEIM:** Do you want to discuss that, Mr. Joyce? Mr. Joyce, the floor is yours.

**DELEGATE JOYCE:** Well, I think there should be no question on this, but there's a typo in there. What I'm talking about is that Section 2, subsection 1 of the minority report as it's written on page 37, so maybe if the clerk would read that section—instead of the majority report, if they'd read—

**CHAIRMAN AASHEIM:** Will the clerk read the minority report?

**CLERK HANSON:** "Section 2, Election; Sub. 1: The governor, lieutenant governor, secretary of state, attorney general, state treasurer, the superintendent of public instruction and the state auditor shall be elected by the qualified electors of the state at a general election held and finally determined as provided by law."

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** I move that the section just read be adopted when this committee does arise and report after having it under consideration.

**CHAIRMAN AASHEIM:** Any discussion?
Mr. Martin.

**DELEGATE MARTIN:** In order to expedite matters, would it be all right to suggest that we add subsection 2 of Section 2 and consider it at one time?

**CHAIRMAN AASHEIM:** Well, do you want to make the motion, Mr. Martin?

**DELEGATE MARTIN:** I'll so move.

**CHAIRMAN AASHEIM:** The motion has been made that we pass—is that in order, Mr. Murray?

**DELEGATE MURRAY:** (Inaudible).

**CHAIRMAN AASHEIM:** Well, the motion is before the house.

**DELEGATE ESKILDSEN:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** We're all ready to take the vote on Section 1. Let's take it, and then we can move right on to Section 2. We'll save time.

**CHAIRMAN AASHEIM:** Mr. Eskildsen,

are we—we have adopted Section 1. No? Mr. Eskildsen has the floor.

**DELEGATE ESKILDSEN:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** We are ready to vote on subsection 1 of Section 2. Now, if you just call for the vote, we'll be all set.

**CHAIRMAN AASHEIM:** Will you state that again?

**DELEGATE ESKILDSEN:** We are ready to vote on subsection 1 of Section 2—

**CHAIRMAN AASHEIM:** Yes.

**DELEGATE ESKILDSEN:** —of the minority report.

**CHAIRMAN AASHEIM:** Who made the motion?

**CLERK HANSON:** Mr. Joyce.

**CHAIRMAN AASHEIM:** Mr. Joyce has made the motion to adopt subsection 1 of Section 2 of the minority report. If there's no further discussion, as many as are in favor of the motion will say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Contrary?

**DELEGATES:** No.

**CHAIRMAN AASHEIM:** The motion is carried. Subsection 2, Mr. Clerk.

**CLERK HANSON:** "Subsection 2: Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or otherwise comply with nomination procedures, so that the office of governor and lieutenant governor shall be voted upon together in the primary and general elections, as provided by law." Mr. Chairman, subsection 2, Section 2.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 2, subsection 2, of the Executive Article, that the report of the—that that section as just read be adopted.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** May I speak on—there's no minority report on this. This is unanimous out of the committee. Speaking in connection with this, may I make this first observation. What we're attempting to do in subsection 2 is we're requiring the Governor and the Lieutenant Governor to run together as a team. That means that they will have to file together in the primary elections and there will be only one vote cast for the team. Then, the one who is nominated in the primary election will again run in the general election as a team, and only one vote will be permitted for the team. And we've added in there this—these words "nominating procedures", just to take care of people who file as Independents, the idea being that if somebody wants to run for Governor and Lieutenant Governor by means of an Independent, that he will also have to do the same thing. He will not have to run in the primary, of course—or they will not—but they'll have to pick up their sides when they file their petition to run as Independents. Now, the purpose of doing this, as I've explained before, is that we think by this section, this subsection, that we are permitting the Legislature to make the Lieutenant Governor a fulltime job. We're not requiring it, but we're permitting it. And we are doing this—we are allowing and requiring the people who run for this job to get together on—as a team in the primary, run in the primary, run in the general—so that we will always have a Governor and a Lieutenant Governor of the same political party. Presumably, also, we will have two who are compatible with one another and who can work together; and then later on in the article, we provide that when that Lieutenant Governor has been elected, he will have such duties as may be prescribed by law or delegated to him by the Governor. And I urge that the majority—unanimous majority report on Section 2 be adopted.

**CHAIRMAN AASHEIM:** Mr. Joyce, is this correct—the minority and majority reports are identical? Isn't that correct?
Mr. Wilson.

**DELEGATE WILSON:** This is correct, Mr. President. We didn't make—

**CHAIRMAN AASHEIM:** Do you want to speak on this, Mr. Wilson?

**DELEGATE WILSON:** Mr. President, we explored this pretty thoroughly in our committee, and we felt that this was the proper way to go. A aspirant for the Governor's office, if he chooses to select his running mate, run with him and run as a team, then we feel that the Governor-elect would then try to use this Lieutenant Governor more effectively in the office of the Governor. There was a question came up in our committee as to whether he should be pro tem of the Senate, President pro tem of the Senate. We bowed to the wishes of the Legislative Committee and did not include this in our article. I have heard considerable talk about it since. This is entirely up to the delegates here, if they wanted to make some changes at this time perhaps this would be the place to make it. We feel that two people running together—in the event that something happens to the Governor, he has in all probability picked a man who would be qualified to follow him and do—exercise the duties of the Governor. There are many things to think about when you are talking about the Lieutenant Governor. We were very fortunate in the tragedy that befell Governor Nutter, that Governor Babcock had run with the—Governor Nutter as a team in that election. Therefore, he was more able to step into the shoes of Governor Nutter. Looking ahead into the future, these are the things that we thought might enhance the position of the Lieutenant Governor if we're required to file as a team and run together.

**CHAIRMAN AASHEIM:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I'd like to direct a question to either Delegate Wilson or Delegate Joyce.

**CHAIRMAN AASHEIM:** Mr. Joyce, will you yield?

**DELEGATE ROMNEY:** The question is—

**DELEGATE JOYCE:** I yield.

**DELEGATE ROMNEY:** —in case a candidate for Governor or a candidate for Lieutenant Governor did not choose to have a running mate, would he be precluded from filing as a candidate for Governor or for Lieutenant Governor? What if he couldn't get a running mate? He or she. (Laughter)

**DELEGATE JOYCE:** Well, the intent of the section is if he can't get a running mate, that he really can't file.

**DELEGATE ROMNEY:** In other words (Inaudible). You have to have a running mate.

**DELEGATE JOYCE:** You have to have a running mate, yes.

**DELEGATE AASHEIM:** Will you please direct your questions to the Chair?

Mr. Harper.

**DELEGATE HARPER:** Will Mr. Joyce yield to another question?

**CHAIRMAN AASHEIM:** Will you yield, Mr. Joyce?

**DELEGATE JOYCE:** Yes, I will.

**DELEGATE HARPER:** Did the committee consider—I started to say, doing away with the Lieutenant Governor, but that's not what I mean—with this office or the Lieutenant Governor? We've talked about the possibility of doing away with other elected offices, partly on the ground that they had work to do that wasn't really prescribed in the Constitution. It seems to me that, of all the officers we have thought about, that the Lieutenant Governor has the least to do, and we seem to be in a quandary to find a way to occupy him, whether to make him a full-time person or part-time. Did you consider leaving off the office altogether?

**DELEGATE JOYCE:** We did not.

**DELEGATE HARPER:** That's a brief, concise answer, and I appreciate it. (Laughter)

**CHAIRMAN AASHEIM:** Mr. Joyce, have you answered?

**DELEGATE JOYCE:** Yes.

**CHAIRMAN AASHEIM:** All right, Mr. Driscoll.

**DELEGATE DRISCOLL:** Mr. Chairman, could I ask a question of Mr. Joyce, please?

**CHAIRMAN AASHEIM:** Will Mr. Joyce yield?

**DELEGATE JOYCE:** I yield, Mr. Chairman.

**DELEGATE DRISCOLL:** Mr. Joyce, what happens if, between the nomination and the election, one of the team members dies? Another catastrophe occurs?

**DELEGATE JOYCE:** I suppose that what would happen is that we'd have to provide by law some way to have that—one of [or] the other—

of course, if the Governor—let me strike that. If the candidate for Governor dies, well, it's the same situation that does now. He won't be elected. (Laughter)

The second situation is, if the candidate for Lieutenant Governor dies—Mr. Chairman, if the candidate for Lieutenant Governor dies, we're going to have to provide some method to having the candidate for Governor substitute another teammate, and that may be a deficiency in the system, but it can be corrected if you just will vote whether or not you want to do it this way.

**CHAIRMAN AASHEIM:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President, I don't see why it's necessary for the Governor and the Lieutenant Governor to run as a team in the primary. And, in any event, after the primary, there will have been in each party a Governor and a Lieutenant Governor elected—or nominated, I should say, and from that time onward they run as a team, no matter who they are. Now, what's the matter with that?

**CHAIRMAN AASHEIM:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** I would see no need in putting them together at a later date if they didn't start out together in the primary. You would defeat the purpose of the whole act here. The purpose of it is, is to have two people that are compatible to hold these two offices as Lieutenant Governor and Governor. Now, if you went through the primary and then selected someone to put with the Governor candidate, why, of course, you wouldn't achieve this purpose at all. So, the only way it can be achieved is to have them run in the primary and then the winning pair here carry on through to general election. Thank you, Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Felt, did you want to speak on this?

**DELEGATE FELT:** No.

**CHAIRMAN AASHEIM:** Anyone else?
(No response)

**CHAIRMAN AASHEIM:** Did Mr. Joyce want to close on your motion?

**DELEGATE JOYCE:** (Inaudible) Mr. Chairman, I—the idea is there before you and it's up to the delegates to decide on it. I'm not going to speak any further at length on it, other than to say that we did consider how we could make the Lieutenant Governor really a full-time job, but we couldn't have come up with any acceptable way, so that it's being left up to the Legislature; but we submit that this is—we're hopeful that the Legislature will make it a full-time job in the sense that they'll pay an adequate salary, and we're leaving that to the Legislature, and there's nothing further to be said on it, and I close.

**CHAIRMAN AASHEIM:** The question then arises—for what purpose do you arise, Mr. Romney.

**DELEGATE ROMNEY:** I ask for a roll call and seconds, for posterity.

**CHAIRMAN AASHEIM:** A roll call vote has been requested. The motion then arises on the motion of Mr. Joyce. Mr. Joyce, do you want this to be the minority report or the majority report? Do you care? Adopt the sub—

**DELEGATE ROMNEY:** —well, I'd like it to be the majority report because I'd like to at least have a vote on the majority one time, being that it's identical to the minority. (Laughter)

**CHAIRMAN AASHEIM:** The motion then arises on—the question—

**DELEGATE BABCOCK:** I don't object to giving this to the majority, except that I think we already moved that we were acting on the minority report.

**CHAIRMAN AASHEIM:** I didn't hear for sure. It's very difficult to hear up here. It really is. The question then arises on the motion of Mr. Joyce that when this committee does arise and report, after having had under consideration subsection 2 of Section 2 of the minority report of the Executive report—we'll vote Aye on the voting machine. Those opposed will vote No.

Has everyone voted?
(No response)

**CHAIRMAN AASHEIM:** Has everyone voted?
(No response)

**CHAIRMAN AASHEIM:** Does anyone want to change his vote?
(No response)

**CHAIRMAN AASHEIM:** The clerk will tally the vote.

| | |
|---|---|
| Aasheim, Chairman | Absent |
| Anderson, J. | Absent |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Absent |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Absent |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Graybill | Absent |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Absent |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Absent |
| Holland | Aye |
| Jacobsen | Absent |
| James | Absent |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Absent |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Absent |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Absent |
| Schiltz | Aye |
| Siderius | Nay |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Absent |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |

**CHAIRMAN AASHEIM:** Mr. Joyce, yes, you may explain your vote.

**DELEGATE JOYCE:** If you will check in the appendix, you will see that I voted No in the committee on it, but still I signed the majority report. And I just reserve the right to be consistent. I'm glad it passed, however.

**CLERK HANSON:** Mr. Chairman, 70 delegates voting Aye, 15 voting No.

**CHAIRMAN AASHEIM:** 70 having voted Aye, 15 having voted No, the motion carries.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, members of the delegation. I move that we recess until 7:30 this day.

**CHAIRMAN AASHEIM:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. Chairman, I'd like to rise to a point of personal privilege for just a minute. I should like to offer my apologies to this body. It was I who had distributed, upon request, this AF of L-CIO letter that went to your desks while we were voting on this matter of the state Superintendent of Public Instruction. I don't particularly apologize for the letter. I think the letter is fine. We've had lots of other things on our desks, too; but the timing was bad, and I admit it. I apologize to you, Mr. Harbaugh, and I apologize to some other people in here who have expressed their resentment to me and for whom I have a great deal of respect. Sorry

**CHAIRMAN AASHEIM:** The motion now arises on Mr. Eskildsen's motion that we recess till 7:30. As many as are in favor will say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Opposed?

(No response)

**CHAIRMAN AASHEIM:** Motion is carried.

(Committee recessed at 5:10 p.m.—reconvened at 7:40 p.m.)

**CHAIRMAN AASHEIM:** The Convention will be in order. We are now on Section 3, and the Chair is on page 18 of the majority report. The clerk will read Section 3.

**CLERK HANSON:** "Section 3, subsection 1: Any person shall be eligible to the office of governor, lieutenant governor or secretary of state if he or she is a citizen of the United States, a resident of Montana for 2 years next preceding the election, and is otherwise a qualified voter." Mr. Chairman, subsection 1.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Clerk, would you please read what I—the Section 3 that I wrote for you up there instead of that one?

**CHAIRMAN AASHEIM:** Will you read it, Mr. Clerk?

**CLERK HANSON:** "Section 3, Qualifications; sub 1: Any person shall be eligible to the office of governor, lieutenant governor, secretary of state, state treasurer and state auditor if he or she is a citizen of the United States, a resident of Montana for 2 years next preceding the election, and is otherwise eligible to hold public office."

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** Could you also add in there "superintendent of public instruction"? Didn't I write that in?

**CLERK HANSON:** No.

**DELEGATE JOYCE:** Oh. Ladies and gentlemen, what I've done here in Section 3 under qualifications, I've conformed to the action of the Convention this afternoon by inserting in the majority report now "the superintendent of public instruction, the treasurer and auditor." So, if you'll turn to page 18 and simply write that in on your—under Section 3. You will see that we are being consistent, and I also have stricken the last three words on page 19, line 3, which says, "a qualified voter". Is everyone following me now? And insert in lieu thereof these words—do you want to write them?—"eligible to hold public office".

**CHAIRMAN AASHEIM:** Mr. Joyce, again. Will you repeat the three offices you've filled there on page 18?

**DELEGATE JOYCE:** Yes. "Superintendent of public instruction, state treasurer and state auditor."

**CHAIRMAN AASHEIM:** Mr. Joyce, you have the floor.

**DELEGATE JOYCE:** Now, with these amendments, we conform to what was done this afternoon by the Convention and we conform to what was done in the Election and Suffrage, and we're making it perfectly clear that you don't have to just be a qualified elector, you have to be eligible to hold public office, and Style and Drafting can consolidate this, but by doing this now, we have drawn the issue between the majority and the minority report.

**CHAIRMAN AASHEIM:** Mr. Joyce, have you moved to adopt this subsection? You (Inaudible).

**DELEGATE JOYCE:** No. I'm going to move right now, but I'm trying to explain what we've done.

**CHAIRMAN AASHEIM:** All right.

**DELEGATE JOYCE:** We've drawn the issue between the majority and the minority report because the difference between the two is that the majority report requires no age qualifications and the minority does. Now, lest you think that we've deliberately omitted the Attorney General out of this section, we haven't. He's in subsection 2, so we'll come to him. So, if—I therefore, Mr. Chairman—

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** —move that when this committee does arise and report, after having under consideration Section 3, subsection 1, of the Executive Article, as read by the clerk, that the same be adopted.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** I have—it's self explanatory what we've done, we've eliminated any age requirement. I might say the minority report requires ages, and I think at this time they should move the minority report, and we can then debate the issue of ages.

**CHAIRMAN AASHEIM:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President.

**CHAIRMAN AASHEIM:** Mr. Wilson

**DELEGATE WILSON:** I move amendment to the majority report, the minority's report on qualification, found on page 38, Section 3. Would the clerk read that section please?

**CLERK HANSON:** "Section 3, Qualifications; sub 1 of the minority report, page 38: No person shall be eligible to the office of governor, lieutenant governor, attorney general or superintendent of public instruction unless he has attained the age of 30 at the time of his election, nor to the office of secretary of state, state auditor, or state treasurer unless he has attained the age of 25 years. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States and have resided within the state 2 years next preceding his election." Mr. Chairman, subsection 1, Section 3, of the minority.

**CHAIRMAN AASHEIM:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President, we realize that it is unlikely that the electorate would elect an 18-year-old to these offices, but we feel strongly that the Constitution must guarantee a certain maturity as qualification for office holders. We are conscious of the increased intelligence and ability of our young people but feel confident that the majority, those with mature attitudes, would want us to require such qualifications for their own protection, to insure the dignity of the office and to provide a goal for them to strive for. In comparing Montana's present Constitution with six others, we found the states of Alaska, Michigan and New Jersey require a Governor to be at least 30 years of age; Hawaii and Puerto Rico, 35 years. They also require longer residency requirements and virtually all state constitutions require higher age qualifications for state officers than for the right to vote.

Mr. President.

**CHAIRMAN AASHEIM:** Mr. Wilson.

**DELEGATE WILSON:** I move that when this body arises to consider the minority report, that they adopt the same.

**CHAIRMAN AASHEIM:** Any comments? (No response)

**CHAIRMAN AASHEIM:** You now, members of the—

**DELEGATE CAMPBELL:** I'd like a roll call vote.

**CHAIRMAN AASHEIM:** A roll call has been requested.

Mr. Campbell.

**DELEGATE CAMPBELL:** Mr. Chairman, I would just like to say a couple of words in opposition to the minority report. As you know, in our general qualifications, we did put a qualified voter, eligible to hold office. As you know, in the Legislative Article, we did go to a qualified voter, qualified to hold office. I think now that putting back in these artificial age barriers, which really do not guarantee any particular qualifications in the Constitution, would be highly unfair. I don't feel that the age 30 shows any particular wisdom any more than the age 60 or 18. I think we should have faith in the electorate that they will elect by the majority vote the person they feel best qualified. We have found from our Bill of Rights Committee hearings that young people have shown responsibility, enthusiasm towards the prospect of political equality. I think we in Montana have a rare opportunity in that we're one of only two states to have a Constitutional Convention after the 26th Amendment has given political equality and the right to vote to all citizens of this nation 18 years of age. I've noticed that in North Dakota they do not rquire any 25 or age 30, just going now to the age 21. I think it's highly unfair for someone who is qualified to vote and have to wait an additional 12 years to run for an office that he's voting for. I have found that this has instilled a great feeling of responsibility in young people. It's not something that they have taken lightly, and I really feel that political equality is the first plank in bridging the generation gap, and I feel that Montana can take its place along with Wyoming, who first gave women the right to vote some 45 years before the State of Montana took that step. I would oppose the minority report on the age qualifications. I think that our hearings that we've had that were called in would show that 39 out of 46 calls that we received favored allowing 18-year-olds full participation within the system indicates that the state is ready for this, so I would oppose the minority report and stand in favor of the majority report. Thank you, Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman, I rise in support of the minority report. When I became 21 years of age I waited quite a while before I could file for Governor, and I haven't made it yet. I don't think it's going to hurt a person to wait the 3 additional years that result from lowering the voting age from 21 to 18. I have a very high regard for the ability and dedication of the young voter. However, when it comes to occupying the position of Governor and the positions that are referred to in the minority report, I think that person needs the maturity that he will have and the education his elders will receive as he reaches it. I think we're making a very serious mistake in trying to hand everything to youth on a silver platter. I would support an 18-year-old having the opportunity to serve in the Legislature. I think their judgment and their abilities are fine when they're one of a collective body, but I would hate to think of an 18-year-old, through some fluke of appointment or otherwise, being Governor of the State of Montana without the maturity that goes with the ability he has. And for that reason, and that reason alone, I support the minority report.

**CHAIRMAN AASHEIM:** Mr. Arbanas, did you want to speak?

**DELEGATE ARBANAS:** I wanted to ask a question; maybe of you, Mr. Chairman.

**CHAIRMAN AASHEIM:** Yes, Mr. Arbanas.

**DELEGATE ARBANAS:** With regard to the vote on this, if I were to vote for this minority report, would I be overturning the action we took the other day in Section 4 of the Suffrage and Election where we—is it in contradiction to it or not?

**CHAIRMAN AASHEIM:** Mr. Davis, will you answer that?

**DELEGATE DAVIS:** Mr. Chairman. No, you would not, because that section provides under—as provided by law, subject to other qualifications as provided by law. So additional qualifications for any office can be added to those minimum qualifications under Section 4, Election and Suffrages.

Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Arbanas, did you want to continue?

**DELEGATE ARBANAS:** (Inaudible)

**CHAIRMAN AASHEIM:** Mr. Davis.

**DELEGATE DAVIS:** I would move to amend the minority report on line 4, where it says "age of 30 years", to "age of 25 years" to keep the age qualifications consistent for all of the higher elective offices.

**CHAIRMAN AASHEIM:** Mr. Davis.

**DELEGATE DAVIS:** Mr. Chairman, I think that we would keep the age qualifications if the minority is adopted the same for these other offices. I strongly favored higher age qualifications when I came here, but as a result of the last 6 weeks, I think that they haven't seemed to make too much difference. But I would like to reduce them in this area so they'd all be the same at 25 in the event they do adopt the minority.

**CHAIRMAN AASHEIM:** Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman, the last couple of days we've had a delegation from Park County High School here, and one of the questions that we asked them were if they were registered to vote, and a good many of them were registered to vote. And one of the other questions that we asked them were if they thought that they could be elected Governor at 18, 19 or 20, and the answer was that they didn't think that they were old enough and that they had the maturity enough to do it. We also had an opportunity to talk with some students of Montana State University and asked them the same question, and they themselves said that by their own judgment they didn't think that they had the maturity and the age bracket. Then I asked the question, what about some of us oldsters; if we were to restrict the young people, would they in turn restrict the old people. That's something to think about. I support the majority proposal.

**CHAIRMAN AASHEIM:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman, I support the majority proposal also. I'm wondering about the age qualifications, taking off from where Mr. Martin just was. These kids rightly understand that at 18 or 19 they probably are not ready to be Governor of the State of Montana. It would be fairly presumptive for an 18-year-old to feel that he would be elected just because he thinks maybe he is. As I understand the election procedure, a person in our state has to have the party decide that he is to be their gubernatorial candidate. Then he has to carry the election. I go along with what Mr. Dahood said the other day, that if a person can do this he must be a remarkable person as a young person. I don't know what 30 has to do with anything. I would rather have a good man at 29 than a poor one at 60. (Laughter) If Alexander the Great had had this restriction, he would not have been able to put together his empire. At 33 he died, with no more worlds to conquer. He evidently was one of the most able generals around for his time. And you can go into our own United States history, including some of the people who wrote our Declaration of Independence, and they would not have been able to qualify under this kind of restrictive ruling to run for Governor of the State of Montana. The one thing we're telling the kids all the time now, and I mean by that our young people and young adults, is that they ought to work within the Establishment. And a thing like this may not seem to those of us who are older and don't have to bother about this age limit to mean anything, but though there will not be any young person in his early 20's elected Governor, I'm sure, the fact that his state does not absolutely make him wait until an age like 25 or 30 is a sort of a symbol, at least, the Establishment is open to their participation, and this means a good deal. And the other point I had already noted down, Mr. Martin, to comment on was, I think you could go to the other side and say that a person over 65 or 60, or where is that age of effectiveness that—we say it begins at 30, where does it cut off?

**CHAIRMAN AASHEIM:** Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Choate.

**DELEGATE CHOATE:** You know, it's probably of little consequence, but I think that probably this is the first time I've risen in support of something that has been said by Mr. Harper, but I agree in principle with what the man said. I think that the office of Governor and some of the other high elective offices of the state require a certain stature that perhaps kids of 18 or 19 or 20 might well acquire; it's very doubtful, though. I agree with Mr. Dahood that if we have such a guy that really comes on strong, we ought to really consider him, but I don't see anything in the offing. I said one time to my oldest daughter, now who is 27 and at that time was about 18, I said, "You know, Honey, you're a pretty good kid." And she said, "Yeah; but you know Dad, there ain't no market for them no more." (Laughter) And so, it's kind of like that. I think the office deserves some stature. I think that it requires a little aging to get to that point, and I think that the person who'd aspire to the office must need a little aging to get to that point, so I would support the idea that an age of probably 25, or something more than 18, is certainly in order for the top people in our Executive branch of government. Thank you, Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. James.

**DELEGATE JAMES:** I'd like to support the majority proposal. I'd say if he or she has got what it takes, let's take what he or she has got. (Laughter)

**CHAIRMAN AASHEIM:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President, I rise in support of the minority proposal, and from the conversations I've heard as others have spoken on this, they don't think that a person—

**CHAIRMAN AASHEIM:** Let's have it quiet.

**DELEGATE SWANBERG:** Does that apply to me, too? (Laughter)

**CHAIRMAN AASHEIM:** I should say not, Mr. Swanberg.

**DELEGATE SWANBERG:** I'm sorry. They did not seem to think that a person 18 years of age could get to be Governor. Let's reflect for a moment what we did this afternoon. We required that the Governor and the Lieutenant Governor run as a team, and I submit that the first thing that a candidate for Governor would do would line himself up with a young candidate, the purpose being to get the young vote. Now then, suppose he gets into office and dies. You'll certainly have yourself an 18-year-old Governor, and I think the possibility is very real, and so, let's not go along here saying that it's not very likely that an 18-year-old can get to be Governor, so let's put it in. I say it's very, very likely, so let's watch it.

**CHAIRMAN AASHEIM:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman, I'd like to speak in opposition to the minority report, in favor of the majority proposal, simply because I have a young lady sitting next to me who happens to be 24 and who happens to be, I think, one of the most knowledgeable delegates we have at this Convention. I think that we should support young people.

**CHAIRMAN AASHEIM:** Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. Chairman—

**CHAIRMAN AASHEIM:** Mr.—

**DELEGATE CHAMPOUX:** —I haven't supported anything that the majority brought out today, even though I really care a lot for my good friend, Mr. Joyce and Mr. Garlington, but I rise at this point to support the majority proposal, and I suggest maybe the minority blew it when they chose the age 30

**CHAIRMAN AASHEIM:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Berg.

**DELEGATE BERG:** As the father of four from 23 to 20 to 17 and down to 12, it hasn't been so many years ago—a very few, really—that the oldest of the children was—in quiz sections that we had at home, we would ask, well, who was the Rough Rider? And it was the oldest, that one that's 23 now, not—when she was about 18—that said, after all the history and after all the education that we're so proud of, told us it was Paul Revere. Now, if you're going to talk about age and maturity, you've got to take into consideration that most kids at that age simply have no background, no maturity, to handle the fundamental functions of government. I wouldn't—my 17-year-old, I'm sure, would be very happy to come in here and push these buttons just as I do, and you'd be surprised how different they would be. And yet I believe that when she becomes at least 25, she will push those buttons similarly to what I do. In the course of administering estates, you get into this serious problem of the maturity of children, and in almost every instance you find that most parents—and I think this is typical of most people throughout Montana—do not want to trust their children, at least with the administration of their estates, until they have achieved the age of 25. Now, that's talking about just simple administration of their own personal affairs. And if their parent themselves feel that they want to—they want to restrict that age-limit to 25, I think the State of Montana has a problem in restricting at least the major offices of this state to the age of 25. I'm not so sure that 30 is the great age. I might say this—that, conservative as I'm sure I am now, when I was 25, I can remember my father discussing with me the rights of man, and, of course, I was a great advocate of the so-called socialistic rights of men at that time. I'm not saying that I'm not now, but in that time, my father, who was then some 60-odd years old, looked upon me as a great radical, a real Communist; almost threw me out of the house. Now, it is a question of maturity. Twenty to twenty-five is an age of maturity. It's [illegible] everywhere, and if we don't recognize that in the principles of office particularly the most fundamental offices here in this state, we are missing a very important factor in society. I support the minority, except this—I would limit the age [illegible]

**CHAIRMAN AASHEIM:** Mr. Lorello.

**DELEGATE LORELLO:** I feel that we have some delegates here who enjoy this numbers game. We had an argument like this when we were going to give the young people the right to drink when they were 19. And I have a bar and restaurant and I have some customers 60 who are not mature enough to drink. (Laughter) I support the majority proposal

**CHAIRMAN AASHEIM:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I came to this Convention committed to the idea that there had to be a definite age limit relevant to what I, in my judgment, considered to be sufficient maturity for political achievement in political office. As Chairman of the Bill of Rights Committee, I listened to many witnesses testify on this point and, of course, in connection with it, was exposed to literature on the subject. As a result, a great deal of thought had to be given to the problem. I think when the problem is analyzed, I think we will all have to agree that the age limit is an artificial barrier that in many respects insults the intelligence of the adult voter of the State of Montana. If we are going to say to someone of the age of 18 that you have the right to vote and you have the right to die for your country, and we want you to be fully responsible and, within the area of our legal system, follow the line that the law lays down, then I think they ought to be given all of the privileges, even though, in reality, those privileges are not attainable. There is no one of the age of 18, 19, 20, or perhaps 22 or 23 that will ever be Governor of the State of Montana. I daresay that, within our lifetime, it is highly unlikely that we will see anyone of a tender age under 25 that will ever succeed in gaining high state office. But if somewhere such a person appears on the horizon, has enough intelligence to convince the electorate—an intelligent electorate—the most intelligent electorate now that the State of Montana has ever had because of educational quality, qualification and exposure to the world about them—but if some individual can convince that type of electorate, then he must have some real ability. He must be a highly precocious individual, a genius in his own right. If he has that ability, regardless of age, should we, the people of the State of Montana, be deprived of that type of service to our state? Let us think about it. Let us ask ourselves—is it logical, really, truly, realistically, to place an age limit with respect to holding office when a vast majority of the voters are above the age of 25 or above the age or 30? And I wonder, too, how many of the young contemporaries would vote for someone simply because he or she is young as they are young? I think we've got to show more confidence in our young people. We've got to show them that we want whatever resistance that they have to our system to fall within the law, that we repose faith and confidence in them; we have all the faith and confidence in them that we want them to have in us. And we can show it here and now by taking away an artificial barrier. I support the majority proposal.

**CHAIRMAN AASHEIM:** Mr. Rollins. Will you hold just a minute, Mr. Rollins? We're going to change the tape. You'll have the floor when we get ready to go.

(Recess for 2 minutes to change tape)

**CHAIRMAN AASHEIM:** We'll come back to session. Mr. Rollins has the floor.

**DELEGATE ROLLINS:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Rollins.

**DELEGATE ROLLINS:** I'm not sure whether or not the pause for the new tape is going to help me any. While we're playing this numbers game; Mr. Berg talks about his four children, let me talk about my eight. Now, by our figuring, I should know twice as much about children as Mr. Berg. Probably it's geometrical rather than merely arithmetic because eight—when you have eight children, you have much more than twice as many as four, I assure you. But what are we talking about? What kind of an age are we talking about? Are we talking about the mere chronological age that these children have, that these young people have? That can vary greatly. Eighteen-year-olds can vary greatly in ability. I'm sure we all realize that. We know that even two identical eighteen-year-old twins would not be the same, that there would be variations. Mr. Chairman, I oppose the minority report. I favor the majority report. Let's let these young people make what they can out of their lives.

**CHAIRMAN AASHEIM:** I'd like to remind you we're speaking on the motion to amend from 30 to 25, and we're going to vote on that as soon as you are through talking about it.

Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I trust that at this time of night and at this stage of proceedings that the delegates here will consider the following speech as entitled to equal dignity. I oppose the amendment. I oppose the minority report and enthusiastically support the majority report.

**CHAIRMAN AASHEIM:** Any more discussion on the motion to amend line 4?

Mr. Davis.

**DELEGATE DAVIS:** May I close?

**CHAIRMAN AASHEIM:** You may close.

**DELEGATE DAVIS:** In closing, I would only like to know if the Chair would permit this amendment to be known as the Mae Nan Amendment. Thank you.

**CHAIRMAN AASHEIM:** Members of the assembly, you now have before you the motion of Mr. Davis that we amend in line 4 of the minority report by striking the number "30" and inserting in lieu thereof number "25". As many as are in favor of the motion, say Aye.

**DELEGATES:** Aye.

**DELEGATE McNEIL:** Roll call.

**CHAIRMAN AASHEIM:** A roll call vote has been requested. Sufficient seconds?

(Delegates arose)

**CHAIRMAN AASHEIM:** A roll call vote has been asked for. Those who want to vote Aye will do so on the board. Those who want to vote No, do so.

Has everyone voted?

(No response)

**CHAIRMAN AASHEIM:** Does anyone want to change his vote?

(No response)

**CHAIRMAN AASHEIM:** If not, the clerk will tally the vote.

| | |
|---|---|
| Aasheim-Chairman | Absent |
| Anderson, J. | Aye |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Absent |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Nay |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Aye |
| Conover | Absent |
| Cross | Aye |
| Dahood | Nay |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Nay |
| Furlong | Absent |
| Garlington | Aye |
| Graybill | Absent |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |

| | |
|---|---|
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Absent |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Absent |
| Rebal | Absent |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Absent |
| Schiltz | Absent |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Absent |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Absent |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 48 delegates voting Aye, 37 voting No.

**CHAIRMAN AASHEIM:** 48 having voted Aye, 37—

**CLERK HANSON:** 37.

**CHAIRMAN AASHEIM:** 37 voting No, the motion has carried.
Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman, Loendorf votes No.

**CHAIRMAN AASHEIM:** Mr. Ward.

**DELEGATE WARD:** Ward votes No.

**CHAIRMAN AASHEIM:** The vote has already been announced, so you're too late; I'm sorry. We now are back to the motion by Mr. Wilson to amend the majority report on page 38, Section 3, subsection 1, of the minority report and the motion reads that when this committee does arise and report that it adopt Section 1, subsection 1, of the minority report on the Executive Committee proposal, as amended. There weren't any amendments, were there? Were there any amendments, Mr.—John?

**CLERK HANSON:** Yes—(Inaudible).

**CHAIRMAN AASHEIM:** Oh, yes, you're right—as amended.
Mr. Davis.

**DELEGATE DAVIS:** Mr. Chairman, I support the majority proposal.

**CHAIRMAN AASHEIM:** Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. Chairman, I also support this. I would also like to say that I can personally attest that being Governor is not as easy as it looks, and I would venture to say, in all due respect to Mae Nan Robinson, there would be a few problems she might have if she were Governor.

**CHAIRMAN AASHEIM:** Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. Chairman, there are a few problems I'm having being a member of the Constitutional Convention—(Laughter)—but I'm not sure it's because my age is 24. I would certainly rise in support of the majority report. I have not been convinced as yet that man is that much like wine in that man necessarily improves with age. (Laughter)

**CHAIRMAN AASHEIM:** The question—any further discussion? The question then—
Mr. Wilson.
Mr. McNeil, unless you want—

**DELEGATE McNEIL:** I want to have a roll call vote and ask for the necessary seconds on the minority report.

**CHAIRMAN AASHEIM:** Mr. Wilson, you have the floor.

**DELEGATE WILSON:** Mr. President.

**CHAIRMAN AASHEIM:** Mr. Wilson.

**DELEGATE WILSON:** I'd like to close on—

**CHAIRMAN AASHEIM:** You may close.

**DELEGATE WILSON:** —on the minority report. It was not our intent that we would disenfranchise young people from becoming Governor, but we feel that this office is one of the highest offices in the state. And we also feel that the young people themselves would feel that we were doing them a disservice if we allowed this office to be eligible to an 18-year-old vote. We feel that we are providing a goal for these young people to shoot at. You just stop and think a minute. We gave the young people practically everything. We've provided them cars. We've provided them all the educational facilities. We allow them to get married younger. Some cases, we're even saying they don't have to get married. (Laughter) We are also saying that you have everything on a golden platter. What is there left? What goals are left for these young people to shoot at. I feel quite confident that my grandchildren would support me in the position I have taken on this, that they will look back when they become 30 years of age, 25 years of age, and they will say, "I wonder why you didn't leave some goals for us as young people to strive for, to attain." I move the adoption of the minority report, Mr. President.

**CHAIRMAN AASHEIM:** The question now arises on the motion of Mr. Wilson that when this committee does arise and report, that it adopt Section 1—It has been requested. That it adopt Section 1, subsection 1, of the minority report on the Executive Committee proposal, as amended. A roll call vote has been requested.

Mr. Delaney, for what purpose do you arise?

**DELEGATE DELANEY:** Section 3, subsection 1.

**CHAIRMAN AASHEIM:** Thank you for the correction, Mr. Delaney. That's Section 3, subsection 1. We'll vote by roll call. Those in favor—

Mr. Berg.

**DELEGATE BERG:** Are we voting on the age of 25 or 30 for eligibility to the office of Governor or Lieutenant Governor?

**CHAIRMAN AASHEIM:** We're voting on Section 3, as amended—as amended, Section 3 of the minority report.

**DELEGATE BERG:** And the age will be what; 25, or 30?

**CHAIRMAN AASHEIM:** 25, 25 as amended, yes. Is that clear? You're on page 38. You're voting on the minority report, as amended. Those —as many as are in favor will vote Aye on the voting machine; those opposed will vote No.

Has every member voted?

(No response)

**CHAIRMAN AASHEIM:** Does anyone desire to change his vote?

Mr. James, for what purpose do you arise?

**DELEGATE JAMES:** Mr. Chairman, there seems to be some confusion. Are we voting the majority versus the minority report, or what?

**CHAIRMAN AASHEIM:** We are—Mr. James, if you vote for this motion, it will read "25 years" as the age. We're voting on the minority report on page 38. If you reject this, we'll go back to the majority motion of Mr. Joyce. Do you understand this, Mr. James?

**DELEGATE JAMES:** Yes, sir.

**CHAIRMAN AASHEIM:** Anyone else? I want to make this clear. I want you to feel free to be clear on what you're voting on.

Has everyone voted?

(No response)

**CHAIRMAN AASHEIM:** Does anyone desire to change his vote?

(No response)

**CHAIRMAN AASHEIM:** The clerk will tally the vote.

| | |
|---|---|
| Aasheim-Chairman | Absent |
| Anderson, J. | Aye |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Absent |
| Aronow | Nay |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |

| | |
|---|---|
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Aye |
| Conover | Absent |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Absent |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Absent |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Aye |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Absent |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Absent |
| Schiltz | Absent |
| Siderius | Nay |
| Simon | Aye |
| Skari | Aye |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 31 delegates voting Aye, 59 voting No.

**CHAIRMAN AASHEIM:** 59 having voted No, 31 having voted Yes, the motion is lost. We are then on the motion of Mr. Joyce on page 18 of the majority report, Section 3—isn't that right—Section 3, subsection 1, of the majority report of the Executive Committee report.

Mr. Joyce.

**DELEGATE JOYCE:** I close

**CHAIRMAN AASHEIM:** Members of the assembly, you now have before you Section 3. The question now arises on the original motion by Mr. Joyce that when this committee arise and report, that it adopt Section 3, subsection 1, of the majority Executive Committee proposal. As many as are in favor will say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Opposed?

**DELEGATES:** No.

**CHAIRMAN AASHEIM:** The motion is carried. Subsection 2.

**CLERK HANSON:** "Section 3, subsection 2: In addition to the foregoing qualifications, any person to be eligible to the office of attorney general shall be an attorney in good standing admitted to practice law in the State of Montana and have engaged in the active practice thereof for 5 years before election." Mr. Chairman, subsection 2.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 3, subsection 2, of the Executive Article—

**CHAIRMAN AASHEIM:** Let's have it quiet.

**DELEGATE JOYCE:** —that it recommend that the same be adopted.
Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** Section 3, subsection 2, of the majority and minority reports are identical. They're self-explanatory; what we've done is require the Attorney General to have 5 years to be admitted—that the Attorney General shall be an attorney in good standing, admitted to practice in the State of Montana for 5 years. We did this to conform with the Judicial Article. It is self-explanatory.

**CHAIRMAN AASHEIM:** Any discussion?
(No response)

**CHAIRMAN AASHEIM:** If not, the question arises—
Mr. Heliker.

**DELEGATE HELIKER:** Would Mr. Joyce yield to a question?

**DELEGATE JOYCE:** Mr. Chairman, I will yield.

**DELEGATE HELIKER:** What is the purpose of the 5-year residency requirement?

**DELEGATE JOYCE:** Not 5 years' residency, 5 years admitted to practice law.

**DELEGATE HELIKER:** In Montana?

**DELEGATE JOYCE:** Yes.

**DELEGATE HELIKER:** It's the same thing, isn't it?

**CHAIRMAN AASHEIM:** Will you direct each question to the Chair?

**DELEGATE HELIKER:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Heliker

**DELEGATE HELIKER:** Will Mr. Joyce yield to a question?

**CHAIRMAN AASHEIM:** Mr. Joyce, will you answer the question?

**DELEGATE JOYCE:** Mr. Chairman, I will.

**DELEGATE HELIKER:** Now, as I understand this—as I read it, you're requiring that he be an attorney in good standing, admitted to practice law in the State of Montana and having engaged in the active practice thereof for 5 years. By 5—by "thereof" you mean in the State of Montana, don't you?

**DELEGATE JOYCE:** Yes.

**DELEGATE HELIKER:** So you are requiring residency in the State of Montana, aren't you?

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** Yes, I guess we are—by indirection, yes.

**CHAIRMAN AASHEIM:** Mr. Heliker.

**DELEGATE HELIKER:** Will Mr. Joyce yield to another question?

**CHAIRMAN AASHEIM:** Will you yield?

**DELEGATE JOYCE:** Mr. Chairman, I'll yield.

**DELEGATE HELIKER:** Mr. Joyce, why should the Attorney General have to be a resident for 5 years when the Governor is required to be a resident for only 2 years?

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Heliker, the rationale that the committee—the unanimous committee chose was that the Judiciary Committee is recommending that anyone to be a judge must be admitted to practice and actively practice for 5 years so that he'll have some experience in his profession. And, so, we have done exactly the same thing in the Executive Article.

**CHAIRMAN AASHEIM:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I note that the proposed North Dakota Constitution contains no such requirement. It says merely that the Attorney General must be licensed to practice law in this state. I, therefore, and for the reason that it seems unreasonable to me that 5 years be required, that that provision be stricken. That would mean—am I on page 5, is that right? That's where I'm reading from, at any rate.

**CHAIRMAN AASHEIM:** Would you be on page 19, Mr. Heliker? I think we're—most of us—on that page.

**DELEGATE HELIKER:** Page 19?

**CHAIRMAN AASHEIM:** Yes

**DELEGATE HELIKER:** Line 8.

**CHAIRMAN AASHEIM:** Line 8, isn't it?

**DELEGATE HELIKER:** I would move an amendment to strike the words on line 9.

**CHAIRMAN AASHEIM:** Wouldn't you want to stop after "Montana", Mr. Heliker?

**DELEGATE HELIKER:** Yes. Yes, I think it's going to be all right there. Yeah, on line 8—a period after "Montana" and strike the remainder of the sentence.

**CHAIRMAN AASHEIM:** Do you want to comment any further, Mr. Heliker?

**DELEGATE HELIKER:** (Inaudible)

**CHAIRMAN AASHEIM:** The motion is to amend line 8 by striking from the—on line 8—"and have engaged in the active practice thereof for 5 years before election", and a period after "Montana" on line 8. Any discussion?

Mr. Driscoll.

**DELEGATE DRISCOLL:** Mr. Chairman, I concur in Mr. Heliker's amendment for the very good reason that I wouldn't care to have my good friend, Mickey McKeon, deprived of his chance to become Attorney General of the State of Montana.

**DELEGATE McKEON:** Mr. Chairman, I accept. (Laughter)

**CHAIRMAN AASHEIM:** Mrs. Babcock.

**DELEGATE BABCOCK:** I would like to point out that we are going to let a young person drive our state and he can't get driver's insurance until he's 25, so I would certainly urge that we vote to have a 26-year-old Attorney General to watch over him.

**CHAIRMAN AASHEIM:** Mr. Belcher.

**DELEGATE BELCHER:** Mr. Chairman, as an insurance agent—you can get driver's insurance before 25, but you have to pay a premium for it.

**CHAIRMAN AASHEIM:** Mr. Campbell.

**DELEGATE CAMPBELL:** Mr. Chairman, I might point out that under the present statutes of Montana, you can be an insurance agent at age of 18, which are considered adults. I might just rise in support of Mr. Heliker's motion. As you know, to have a law practice, you have to go 4 years to undergraduate school, 3 years to law school, now, which is a total of 7 years of college. It isn't possible to get through those 7 years being much less than 25 years of age. I feel that North Dakota—again looking at their article—put that the Attorney General must be licensed to practice in the state with no other qualification. I would certainly support this. I don't feel that there will be any rush towards this office either, and I feel that adopting it in the original form would again put it up to approximately 30 years of age. I would support Mr. Heliker's motion.

**CHAIRMAN AASHEIM:** Mr. Studer.

**DELEGATE STUDER:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Studer.

**DELEGATE STUDER:** Would Mr. Joyce rise to a question?

**CHAIRMAN AASHEIM:** Will Mr. Joyce yield?

**DELEGATE JOYCE:** Mr. Chairman, I will.

**DELEGATE STUDER:** The way I read that Section 2, I don't think that he'd have to be engaged in 5 years preceding. Wouldn't 5 years of law practice outside of the state and then if he went back and was elected, as Section 1 says, and is otherwise a qualified voter—if he were back here for 2 years after he practiced law for 5 years, wouldn't he be eligible? Under your—

**DELEGATE JOYCE:** Yes. Yes, he would, so I guess I gave the wrong—
Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** Yes, I guess that's right. If he had engaged in 5 years' active practice and then left the state and then came back, he'd have to reside 2 years immediately preceding his election. So it isn't really the same as residency. You're correct, sir.

**DELEGATE STUDER:** Would you yield to another question, Mr. Joyce?

**DELEGATE JOYCE:** Mr. Chairman, I will.

**DELEGATE STUDER:** Then if he had practiced, we'll say, 3 years and was out and practiced somewhere else for a couple of years and was back in here, would he still be qualified if he was in here for 2 years previous to the time he was elected? That would be a total of 5 years of active practice.

**DELEGATE JOYCE:** I guess he would, yes, Mr.—

**DELEGATE STUDER:** Thank you.

**CHAIRMAN AASHEIM:** Mr. McCarvel, did you want the floor?

**DELEGATE McCARVEL:** Yes, Mr. Chairman. I think what we're talking about is deleting that portion that would require the 5 years.

**CHAIRMAN AASHEIM:** That is what we're discussing now.

**DELEGATE McCARVEL:** That's what we're discussing, and I move—I rise to support Mr. Heliker in his amendment. I feel that if we have 18-year-olds that are able to run the state, we can always give them a chauffeur—we don't have to let them drive. (Laughter) Highway patrol can take them around. If we have them that bright that they can take it at 18, well, we can also have bright young lawyers coming out of law school and let them be Attorney Generals also.

**CHAIRMAN AASHEIM:** Mr. Joyce

**DELEGATE JOYCE:** May I ask Delegate Aronow a question?

**CHAIRMAN AASHEIM:** Mr. Aronow, will you yield?

**DELEGATE ARONOW:** I yield.

**DELEGATE JOYCE:** What have you provided in the majority judicial report with reference to the 5 years' actual practice?

**DELEGATE ARONOW:** On district judges, 5 years of active practice of law in Montana, for the reason that district judges are the trial court and it's important that they have experience in the actual trial practice. Supreme Court judges, who are not trial judges but appellate judges, have to have 5 years' experience and knowledgeable in the law of Montana; that they can be law school teachers; they can be working with some agency of government. But we felt that it was necessary for them to have that much experience.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** Thank you, Mr. Aronow. The intention of the majority of the Executive Committee was to put the Attorney General on the same status as the district judge, that he'd have to practice law in Montana for 5 years, learn the procedure of Montana so, therefore—so that he could then be a good, qualified, experienced lawyer when he became Attorney General, and so the issue is clear. If you vote for the majority report, you will be voting that way. If you vote for the amendment, you will be doing the opposite. I don't think that there's any more can be said on the subject.

**CHAIRMAN AASHEIM:** Mr. Heliker. Are you closing...

**DELEGATE HELIKER:** I think Mr. Joyce has now clarified the point that became confused in his conversation with Mr. Studer—that he does mean practice law for 5 years in the State of Montana, which imposes a 5-year residency requirement and, in effect, an age requirement of about 30 years, which is considerably more stringent than imposed on the Governor, and I think this is unreasonable.

**CHAIRMAN AASHEIM:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman. Mr. Joyce, would you yield to a question, please?

**CHAIRMAN AASHEIM:** Will Mr. Joyce yield?

**DELEGATE JOYCE:** Yes, I will.

**DELEGATE CATE:** I've always wondered what the term "active practice" meant. Does that mean working for the bank as a probate lawyer, or does it mean working for an insurance company as an insurance lawyer, or does it mean trying lawsuits—criminal law, civil law, personal injury? What does active practice mean? Could you (Inaudible) term for us?

**DELEGATE JOYCE:** Well, we intended it to mean whatever Mr. Aronow meant in the Judiciary Article. (Laughter)

**CHAIRMAN AASHEIM:** Mr. Cate, did you want to ask another question?

**DELEGATE CATE:** Mr. Chairman. Mr. Joyce, would you yield to another question?

**DELEGATE JOYCE:** Yes.

**DELEGATE CATE:** How many trial cases has our present Attorney General tried?

**DELEGATE JOYCE:** No idea, sir.

**CHAIRMAN AASHEIM:** Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman. Well, I feel that we're being a little bit capricious in our thinking on this thing. I didn't vote on the prevailing side on the matter of the age requirement for Governor, but I think that since this is the direction we're going, I see no reason to fail to support Mr. Heliker's motion to change the ground rules for Lieutenant Governor. As far as the argument about the requirement in North Dakota, it doesn't really mean much to me. I am reminded of the story about the fellow that said, "Do you know how you can tell when a North Dakota pilot landed with his wheels up?" And the guy said, "No, how?" And he said, "Well, because it takes full power to taxi." And that's kind of the way we are here. It's a deal where, I think if we're going to allow a Governor to be elected at 18, I don't see why you put a 5-year restriction for practice of law on the matter of the Attorney General. So, I would support Mr. Heliker's motion. Thank you.

**CHAIRMAN AASHEIM:** Any more discussion on Mr. Heliker's motion?
Mrs. Babcock.

**DELEGATE BABCOCK:** May I ask Mr. Choate a question?

**CHAIRMAN AASHEIM:** Will Mr. Choate yield to a question? Mr. Choate, will you yield to a question? Did you say Choate?

**DELEGATE BABCOCK:** Mr. Choate—over here. Do you feel the Attorney General should be a lawyer?

**DELEGATE CHOATE:** Yes, I think he should be a lawyer, but if he's admitted to practice law in Montana, he probably should be allowed to serve in that capacity. If—provided he is 18 years old, he ought to be allowed to be Governor.

**DELEGATE BABCOCK:** May I ask Mr. Choate another question?

**CHAIRMAN AASHEIM:** Will you yield to another question, Mr. Choate?

**DELEGATE BABCOCK:** Do you think it is possible for him to be a lawyer before that age?

**DELEGATE CHOATE:** I didn't understand the question.

**DELEGATE BABCOCK:** Do you think it is possible for him to be a lawyer before that age?

**DELEGATE CHOATE:** No, I do not.

**DELEGATE BABCOCK:** Well, then, don't you think that they should both have good qualifications to hold those high offices?

**DELEGATE CHOATE:** Yes, ma'am, I surely do.

**CHAIRMAN AASHEIM:** Any more discussion?
Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mrs. Bates.

**DELEGATE BATES:** This is the first time I got up on my feet today, and I thought maybe this way I could get something passed. But, this, to me, is rather ridiculous. If we are going to turn over the top offices of our state to 18-year-olds or 19-year-olds—right now our 18-year-olds can't even sign a contract, and right here we are asking for qualifications for the Attorney General but nothing for the Governor. They can just come out of high school and run. And, to me—I think this is very poor, and I think it will do just what some of our people are looking for—to put the frosting on the cake of defeating this Constitution.

**CHAIRMAN AASHEIM:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Harper.

**DELEGATE HARPER:** Will Mr. Joyce yield to a question?

**CHAIRMAN AASHEIM:** Will Mr. Joyce yield?

**DELEGATE JOYCE:** Yes, I will, Mr. Chairman.

**DELEGATE HARPER:** What is the limitation on qualifications for Attorney General in the present state Constitution?

**DELEGATE JOYCE:** None other than he has to be, I think, 25 and admitted to practice law.

**CHAIRMAN AASHEIM:** Mr. Harper.

**DELEGATE HARPER:** I submit that we haven't really been bothered by this problem in the past, and I don't think we will be bothered, really, by it in the future and so don't see why we should necessarily change the present Constitution in the regard of forcing 5 years resident requirement as a practicing lawyer in the State of Montana when we don't now presently do that.

**DELEGATE JOYCE:** Ask me the question. (Laughter)

**DELEGATE HARPER:** Mr. Joyce—

**CHAIRMAN AASHEIM:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman.

**CHAIRMAN AASHEIM:** For what purpose do you—what is it?

**DELEGATE HARPER:** May I ask Mr. Joyce another question?

**CHAIRMAN AASHEIM:** Mr. Joyce, will you yield to another question?

**DELEGATE JOYCE:** Yes, I will.

**DELEGATE HARPER:** Mr. Joyce, what was the other question you wanted me to ask you? (Laughter)

**DELEGATE JOYCE:** I was incorrect in the answer to the last question. Right now, you have to be 30. If you'll turn to Article VII, Section 3, of the current Constitution—it says, "the office of the attorney general unless he shall have attained the age of 30 years and have been admitted to practice in the Supreme Court of the state or territory of Montana and be in good standing at the time of his election." So I was in error when I said 25. And what we did on the Executive Committee, we just tried to parallel the Judiciary Committee. I don't—do what you want.

**CHAIRMAN AASHEIM:** Any more discussion on the substitute motion of Mr. Heliker?

Mr. Swanberg.

**DELEGATE SWANBERG:** I would just rise to support Mr. Heliker's motion. We've pretty much eliminated all judgment qualifications for Governor, so I don't see why we shouldn't eliminate all judgment qualifications for the Attorney General and allow him to be a candidate for Attorney General immediately upon his graduate from law school when, as every lawyer and every—probably every layman here will tell you, there's no one that knows more than a young lawyer just out of law school. (Laughter)

**CHAIRMAN AASHEIM:** Mr. Ward.

**DELEGATE WARD:** I rise to support Mr. Heliker's motion. It's probably one of the few times during Convention that I'll be able to. Thank you.

**CHAIRMAN AASHEIM:** The question—Mr. Heliker, do you want to close?

The motion then arises—or, the question arises on the motion of Mr. Heliker to amend subsection 2 of Section 3 in the majority report in line 8 to insert a period after "Montana" and strike the balance of line 8 and line 9.

Mr. Campbell, for what—

**DELEGATE CAMPBELL:** Mr. Chairman, I would ask for a roll call vote, please.

**CHAIRMAN AASHEIM:** A roll call vote has been requested. You have the motion. We will vote by the machine. As many as are in favor will vote Aye. As many as are opposed will vote No. Has everyone voted?

(No response)

**CHAIRMAN AASHEIM:** Does anyone wish to change his vote?

(No response)

**CHAIRMAN AASHEIM:** The clerk will then record the vote.

**DELEGATE BABCOCK:** (Inaudible).

**CHAIRMAN AASHEIM:** For what purpose do you arise, Mrs. Babcock?

**DELEGATE BABCOCK:** Well, I wanted to vote but I was not in my chair.

**CHAIRMAN AASHEIM:** Well, the vote has been called for. What is that? Do you want to announce your vote, Mrs. Babcock?

**DELEGATE BABCOCK:** What are we voting on?

**CHAIRMAN AASHEIM:** On Mr. Heliker's amendment.

**DELEGATE BABCOCK:** I vote No.

**CHAIRMAN AASHEIM:** Vote No. Mr. Mahoney wants to be recorded as voting No. Mr. Mahoney. Mr. Mahoney votes No.

| | |
|---|---|
| Aasheim-Chairman | Absent |
| Anderson, J. | Nay |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Absent |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Absent |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Nay |
| Cross | Aye |
| Dahood | Absent |
| Davis | Absent |
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Nay |
| Graybill | Absent |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Absent |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Aye |

| | |
|---|---|
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Absent |
| Rygg | Nay |
| Scanlin | Absent |
| Schiltz | Absent |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Absent |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Aye |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, Delegates Babcock and Mahoney voting No; 38 delegates voting Aye, 45 voting No.

**CHAIRMAN AASHEIM:** 45 voting No, 38 voting Yes, the amendment is lost. We are then on the original motion of Mr. Joyce.
Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I close.

**CHAIRMAN AASHEIM:** Members of the assembly, you now have before you the motion by Mr. Joyce that we adopt subsection 2 of Section 3 of the majority report. As many as are in favor will vote Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Opposed?

**DELEGATES:** No.

**CHAIRMAN AASHEIM:** The motion is carried. Section 4, page 19.
Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee arise and report, after having under consideration Section 4 of subsection 1 of the Executive Article, that the minority report be adopted.

**CHAIRMAN AASHEIM:** On what page again, Mr. Joyce?

**DELEGATE JOYCE:** The minority report begins on page 38, line 16.

**CHAIRMAN AASHEIM:** Page 38, line 16, the minority report.
Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** Subsections 1, 2, 3, 4 of the majority and minority reports are identical with reference to duties. The minority report has also added the duties for the Auditor, which begin on pages 39, line 2, and read as follows: "that the auditor shall be the custodian of all fiscal records of the state. He shall be the issuing officer of all state warrants, with all—with other duties and powers provided by law." The minority did not add any specific duties for the State Treasurer, but if they wish to do so, why, maybe they can do that. But, at any rate, I would move that—to save time, that since the majority and the minority reports are—if we're going to do it subsection by subsection, we could do just subsection 1, which are identical in the majority and the minority report. But—

**CHAIRMAN AASHEIM:** Mr. Joyce, I believe we should take subsection 1 and 2, one at a time.

**DELEGATE JOYCE:** One at a time?

**CHAIRMAN AASHEIM:** I think we should.

**DELEGATE JOYCE:** All right. I therefore move that we adopt Section 4, subsection 1, of the minority report.

**CHAIRMAN AASHEIM:** Which is on page 38.

**DELEGATE JOYCE:** On page 38, which is identical with the majority report.

**CHAIRMAN AASHEIM:** Any discussion?
Mr. Kelleher.

**DELEGATE KELLEHER:** (Inaudible) Joyce yield to a question?

**CHAIRMAN AASHEIM:** Mr. Joyce, will you yield to a question?

**DELEGATE JOYCE:** Yes, I will, Mr. Kelleher—or, Mr. Chairman.

**DELEGATE KELLEHER:** If the treasurer apparently doesn't have any duties, why are we—why do we have one?

**DELEGATE JOYCE:** Because the Convention has voted that they want one and—

**DELEGATE KELLEHER:** That's a good enough reason.

**CHAIRMAN AASHEIM:** The question then arises on the motion—
Mr. Wilson.

**DELEGATE WILSON:** Mr. President.

**CHAIRMAN AASHEIM:** Mr. Wilson.

**DELEGATE WILSON:** We are on Section 1 of Section 4, are we not?

**CHAIRMAN AASHEIM:** Subsection 1 of Section 4, on page 38.

**DELEGATE WILSON:** We haven't came to any other offices or any other duties of any other officers at this time. I move the adoption of subsection 1.

**CHAIRMAN AASHEIM:** It has been moved, Mr. Wilson. The question then arises on the motion of Mr. Joyce that we adopt subsection 1 of Section 4 of the minority Executive report as indicated on page 38. As many as are in favor will say Aye.

**DELEGATES:** Aye

**CHAIRMAN AASHEIM:** Opposed?

**DELEGATES:** No.

**CHAIRMAN AASHEIM:** The motion is carried. Mr. Joyce, subsection 2.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee arise and report, after having had under consideration Section 4, subsection 2, that it recommend the same be adopted.

**CHAIRMAN AASHEIM:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, fellow delegates. The Lieutenant Governor has never really had much to do but sit in the Senate and preside over it. He didn't even have a vote in that body except in case of a tie. And, we took that duty away from him in the Legislative Article. The Executive Article does not delegate any duties to him except those that the Governor might assign. The—yet, they make him a full-time Lieutenant Governor and he will necessarily have an office and a staff, but as Mr. Joyce said earlier, he doesn't have anything to do. Well, I suggest that we give him something to do. And I have an amendment to that section, which I would ask the Chair to read at this time.

**CHAIRMAN AASHEIM:** The clerk will read the amendment, please.

**CLERK HANSON:** "Executive Committee proposal: Mr. Chairman, I move to amend Section 1, subsection 2, page—"

**CHAIRMAN AASHEIM:** 38.

**CLERK HANSON:** "—39—"

**CHAIRMAN AASHEIM:** 38.

**CLERK HANSON:** "—38, lines 20 through 24, of the Executive Committee proposal by deleting in its entirety and inserting in lieu thereof the following language: 'The lieutenant governor shall have the duty to provide information to any person upon request relative to government, to investigate on complaint or on his own initiative any act or omission of any agency of government, and take appropriate action as provided by law, and to perform such other duties as may be provided by law or as may be delegated to him by the governor. But no power specifically vested in the governor by this Constitution may be delegated to the lieutenant governor in this manner.' Mr. Chairman, the—

**DELEGATE CATE:** Mr.—

**CLERK HANSON:** —amendment by Mr. Cate."

**DELEGATE CATE:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Cate.

**DELEGATE CATE:** This afternoon when we talked about the people's advocate, which, as you can see, is back again, somebody said, "Let's leave it to the Governor; let's leave it in the Executive Department." All right. That's what we're doing. We're just telling the Governor what to do here. He's going to appoint a people's advocate; it's going to be the Lieutenant Governor, and he's going to have something to do. People objected to the people's advocate because it would be writing in another statutory office into the Constitution. We've taken care of that. We're not writing in a new office. The Lieutenant Governor is already in our Constitution and recognized as a statutory officer. People were opposed to the people's advocate because it would cost more money. All right, you've got a Lieutenant Governor here that's going to have an office and he's going to have a staff and nothing to do. This isn't going to cost any more money for him to be a people's advocate, and that argument is taken care of. Now, I think we've taken care of about three or four things—the Lieutenant Governor has got something to do. I think this is a legitimate place for a Lieutenant Governor to serve. It does give him something to do. It's something worthwhile. I think we've all recognized that the people's advocate does mean something. Now, I heard in the arguments on the people's advocate—and I have not spoken on the people's advocate previously—that the OEO was the answer. Well, the OEO is not the answer. Legal Services is a farce. Legal Services in Montana is nothing but a divorce mill. That's all it is. Legal Services does not represent the poor and does not help people in these type of cases, and ask anybody that's ever been to Legal Services if you do know any poor people. Secondly, it was said that the County Attorney's office was notorious for helping people with problems. The County Attorney offices in Montana are notorious for passing the buck. That's what they're notorious for. There isn't any place for the poor people to go. There isn't any place for the uneducated people to go, there—and the only place that people can go if they want to go to get some relief against government is to their legislator or to a lawyer. Now, the legislators are going to love this office. They're going to love this office, and I tell you why. Somebody comes to them and he says, "How do I get this grazing district started?" And the smart legislator is going to say, "Well, I know just the guy to call. I'm going to call him and I'll let you know tomorrow", and he gets in the phone booth and calls the people's advocate, the Lieutenant Governor of the State of Montana, and he finds out how to put up the grazing district, and then he goes back to his constituent and he says, "Well, here's how you do it." This has been the history of the people's advocate in other jurisdictions. The legislators have learned to love it. It's also a way to pass the buck. If somebody comes to you with a problem that you don't want to take care of, you can say, "Well, call the Lieutenant Governor, the people's advocate." Fellow delegates, I think that we've finally found a place for the people's advocate, and I would ask you to support it. Thank you. (Laughter)

**CHAIRMAN AASHEIM:** Mr. Monroe.

**DELEGATE MONROE:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Monroe.

**DELEGATE MONROE:** I rise in favor of Mr. Cate's motion. I made a mistake earlier in the day when I deferred my talk in regard to the people's advocate, or my reasons for people's advocate, hoping that the people's advocate proposal would be reconsidered, but it was not. But I would like to speak in favor of such a position and in the form of Lieutenant Governorship, if that be the case. Before the Convention, I had an opportunity to travel around the State of Montana for a couple of weeks, and during that time, I talked to some 800 people. I was in communities—my own, speaking to a few hundred people—and I went to Havre and Plentywood and Glendive and Forsyth, Billings, Lewistown—many of these communities. As I mentioned, I talked to over 800 people. And the people of Montana were very frustrated. They've got a lot of problems, and they don't know where the heck to go. They need a person to whom they can bring their complaints, to—who they can seek remedies from. Right now they have a lot of people but the things are not centralized. They don't get remedies; they don't get answers to their questions. Up in Glasgow, Montana, I ran into three farmers that wanted to know how to set up a herd district. They said, "Why do cows have more rights than the people around here?" and I've tried to remedy some of those situations by being on the Bill of Rights Committee, but I could not refer them to a person that could solve some of their problems, and I did not know where to seek the answers myself. And I would hope that this body might support this idea that is being proposed before us. I would like to see the Lieutenant Governor be a potent person instead of an impotent person.

**CHAIRMAN AASHEIM:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. McNeil.

**DELEGATE McNEIL:** I would very much like to see the written language in Delegate Cate's proposal. If he has strictly Executive powers and does not have a—does not have Legislative or Judicial powers, I will enthusiastically support his amendment.

**CHAIRMAN AASHEIM:** Mr. Arbanas.

**DELEGATE ARBANAS:** I have to say, first of all, that I'm very much in favor of the people's advocate and I hate to be opposing Mr. Cate's motion, but I would like to take a moment to explain to the group why the duties of Lieutenant Governor were left unspecific by the committee. If you have the picture of Lieutenant Governor as—remember, now, running right from the beginning, from the first primary, with the Governor, and he is, because his job is unspecific, able to be truly the assistant Governor. If he's able to be the executive partner, if he's able to be the chief team member of the Governor, then this movement to make him something else will mean that we'll have a people's advocate but we won't have a Lieutenant Governor. It's just too bad that the assembly can't resolve in having both, because the Governor does need that partner, and so that we've solved maybe one problem, we've created another. I think the Executive Committee felt that one of the most constructive, long-reaching, healthy things that they had done was to relieve the job of Lieutenant Governor of specifics so he could be truly that assistant Governor, which we feel was needed.

**CHAIRMAN AASHEIM:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, as an advocate of the people's advocate, I rise in opposition to Mr. Cate's motion because what he is proposing is merely a P.R. man for the Governor. I would hope that in some sense both the Governor and the Lieutenant Governor will always be people's advocates, but this is not what people's advocate, as proposed under that term, under that phrase, in this Convention heretofore, has meant. And I would rather take my chances with the Legislature

**CHAIRMAN AASHEIM:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** I think perhaps my question I can direct to you. Now, this is an overtime session tonight. Is this costing the taxpayers of Montana anything?

**CHAIRMAN AASHEIM:** Mr. Kamhoot, I would say that the lights are here till midnight, and you're paid whether you're here or not, and I don't think the janitors are here. I would say it isn't costing very much more, so keep on talking.

**DELEGATE KAMHOOT:** Well, I'm certainly happy for that. Thank you. (Laughter)

**CHAIRMAN AASHEIM:** Any more discussion on Mr. Cate's proposal?

Mrs. Blend.

**DELEGATE BLEND:** Mr. Chairman, I would rise in support of Mr. Cate's amendment. Since we seem to be making half-measure movements tonight, I think it would be good from other viewpoints to have the Lieutenant Governor serve as the people's advocate. I feel that for a Lieutenant Governor—and I well see the possibility of a Governor choosing a minimum-aged youth to serve with him to cinch a duplicate voting possibility in the election—that it would be a tremendous implant training program for him to produce a better and more mature Governor. I think perhaps, too, that even though it is a half measure for an advocate of the people, that perhaps the Governor would be aware of the importance of this office due to the load that the Lieutenant Governor was carrying, and in this event, it might be better for Mr. Heliker's proposition that the Governor, being aware, would arrange to have one established more quickly. I support the amendment.

**CHAIRMAN AASHEIM:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** I move we adjourn.

**CHAIRMAN AASHEIM:** The question now arises on the motion to adjourn. As many as are in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Opposed?

**DELEGATES:** No.

**CHAIRMAN AASHEIM:** Motion is lost. I think maybe that's a message, a very subtle one—or maybe not so subtle—but it's a message. Let's get on with our work. Any more discussion on Mr. Cate's proposal?

(No response)

**CHAIRMAN AASHEIM:** Are you going to close, Mr. Cate?

**DELEGATE CATE:** I close.

**CHAIRMAN AASHEIM:** The question then arises on the motion of Mr. Cate that—

**DELEGATE CATE:** (Inaudible) —48-48 last time. I'd like to have a roll call. Thank you.

**CHAIRMAN AASHEIM:** A roll call vote has been required, and the motion is on—what is that? But I've got to read the motion. The motion reads: "I move to amend Section 4, subsection 2, page 5, lines 21 through 25, Executive proposal, by deleting in its entirety and inserting in lieu thereof the following language: 'The lieutenant governor shall have the duty to provide information to any person upon request relative to government, to investigate on complaint or on his own initiative any act or omission of any agency of government, and take appropriate action as provided by law, and to perform and—such other duties as may be provided by law or as may be delegated to him by the governor. But no power specifically vested in the governor by this Constitution may be delegated to the lieutenant governor in this manner.'" A roll call vote has been requested. As many as are in favor will vote Aye; opposed will vote No. Has everyone voted?

(No response)

**CHAIRMAN AASHEIM:** Does anyone want to change his vote?

(No response)

**CHAIRMAN AASHEIM:** The clerk will tally the vote?

| | |
|---|---|
| Aasheim-Chairman | Absent |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Nay |
| Conover | Absent |
| Cross | Aye |
| Dahood | Aye |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Absent |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Nay |
| Graybill | Absent |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Absent |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Absent |
| Mahoney | Aye |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |

| | |
|---|---|
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Nay |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Absent |
| Schiltz | Absent |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 24 delegates voting Aye, 62 voting No.

**CHAIRMAN AASHEIM:** 62 having voted No, 24 voting Yes, the motion is lost. The question then arises on the motion of Mr. Joyce that subsection 2—isn't it—subsection 2 of Section 4 of the minority report, page 38, of the Executive Article be adopted. As many as are in favor, say Aye.

**DELEGATES:** Aye

**CHAIRMAN AASHEIM:** Opposed?

(No response)

**CHAIRMAN AASHEIM:** The motion is carried. I might remind you folks that Chair is going to listen to amendments as long as they're in order, but it's going to have to be up to your discretion how much talking you want to do. If you want to talk, you go right ahead and talk. That's the function of this session. But I hope you use your own discretion. The clerk will read subsection—

**CLERK HANSON:** —3.

**CHAIRMAN AASHEIM:** —3. Mr. Joyce, did you have to—

**DELEGATE JOYCE:** Yeah, I'd like to make a—to renew the motion to adjourn. I think we could run through the Executive office tomorrow—the rest of it—there's very little controversy that I can anticipate. Famous last words. But I personally am getting a little weary, and I'm the Chairman and I'd be pleased if we could adjourn.

**CHAIRMAN AASHEIM:** Mr. Joyce, could we finish Section 4?

Mr. Joyce.

**DELEGATE JOYCE:** I can do it. I mean, it's just—if the—yeah, okay. We'll go down through 4. Is that the plan of the leadership?

**CHAIRMAN AASHEIM:** Well, we're going to—I just had word that we're going to go another half hour if we possibly could. Could we finish Section 4? We're on subsection 3 of Section 4.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 4, subsection 3, that the minority report on page 38 be adopted.

Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** The majority and the minority are exactly the same on Sections 3 and 4, but I'm only moving at this time that we—that Section 3 be adopted. The section is self-explanatory. It says "The secretary of state will keep the official acts and records of the legislative assembly and of the executive department as provided by law. He shall keep the great seal of the state of Montana and perform any other duties prescribed by law." I move the adoption of the report again.

**CHAIRMAN AASHEIM:** Any discussion?

(No response)

**CHAIRMAN AASHEIM:** You have before you the motion by Mr. Joyce that we adopt subsection 3 of Section 4 of the minority report, page 38 of the Executive report. As many as are in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Contrary?
(No response)

**CHAIRMAN AASHEIM:** The motion is carried. Subsection 4, please.

**DELEGATE JOYCE:** I move that when this committee does arise and report, after having had under consideration Section 4, subsection 4, of the Executive Article that it recommend that the same be adopted.
Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** This section of the minority and majority reports are identical. It's self-explanatory. It says that the Attorney General shall be the legal officer of the state, with duties and powers provided by law. And what that means is that he will be the legal officer of the state and the Legislature can give him any other duties that they so desire. Right now, they have given him the additional duties of being the head of the Department of Law Enforcement, but we didn't write that into the Constitution. They can repeal that if they want, but this just gives—makes the Attorney General the chief legal officer and such other duties as shall be prescribed by law, and it's self-explanatory.

**CHAIRMAN AASHEIM:** The clerk has an amendment.

**CLERK HANSON:** "Mr. Chairman, I move to amend subsection 4 of Section 4, on page 39 of the Executive Committee proposal, by adding the following language at the end of the subsection: 'He must be of the same political party as the governor'. Signed: Kelleher."

**CHAIRMAN AASHEIM:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman, this—

**CHAIRMAN AASHEIM:** Mr. Kelleher.

**DELEGATE KELLEHER:** —this amendment would merely provide that the Attorney General would be of the same political party as the Governor and in the same way that the Lieutenant Governor must now be a member of the same political party. The purpose of my amendment is to stop the feuding between the Attorney General and the Governor and the partisan bickering when they are of different political parties. That's all I have to say.

**CHAIRMAN AASHEIM:** Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, I resist the amendment. I think we solved this problem earlier in the day, and I suggest we vote on it and proceed.

**CHAIRMAN AASHEIM:** Any further discussion?

**DELEGATE KELLEHER:** May I have a roll call vote and ask for seconds?

**CHAIRMAN AASHEIM:** A roll call has been asked for. The question then arises on the amendment by Mr. Kelleher that on Section 4, subsection 4, following the word "law" on line 1, page 39, to amend by adding say—"the same political party." As many as are in favor will vote Aye, since this is a recorded vote; those opposed will vote No.
Has everyone voted? (No response)

**CHAIRMAN AASHEIM:** Does anyone want to change his vote? (No response)

**CHAIRMAN AASHEIM:** The clerk will record the vote.

| | |
|---|---|
| Aasheim-Chairman | Absent |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Absent |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |

| | |
|---|---|
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Absent |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Absent |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Absent |
| Schiltz | Absent |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Absent |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 4 delegates voting Aye, 82 voting No.

**CHAIRMAN AASHEIM:** 82 having voted No, 4 having voted Aye, the motion is lost. The— Mr. Wilson.

**DELEGATE WILSON:** Mr. President.

**CHAIRMAN AASHEIM:** Mr. Wilson.

**DELEGATE WILSON:** Inadvertently we left out in the hurried preparation of the minority article on the Executive Department describing the duties of the State Treasurer. I would like to insert here "the state treasurer shall keep"—

**CHAIRMAN AASHEIM:** Mr. Wilson, we will—I'll accept your motion when we get through with subsection 4 because we're now talking about the Attorney General, and then I'll accept your motion. Isn't that correct? The question then arises on the motion of Mr. Joyce that subsection 4 of Section 4 of the minority report, being page 38 and 39 of the Executive report, be adopted. Those in favor—

For what purpose do you arise, Mr. Choate?

**DELEGATE CHOATE:** Mr. Chairman, I would—in looking at my copy of this, I would say that Mr. Joyce failed to read the last part of sub. 4 where it has to do with the office of the Auditor. I think that's still in part of sub. 4 and should probably be read and considered with it...

**CHAIRMAN AASHEIM:** Mr. Choate, I believe that's subsection 5. It should be, I believe.

**DELEGATE CHOATE:** No, it doesn't say so in my book. It's part of sub. 4.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** I think it's intended to be subsection 5, and I'll move to amend page 39, line 2, to put the word "5" before it so we will make it perfectly clear for everybody. Just a typo.

**CHAIRMAN AASHEIM:** The motion—let's see—
Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman, you're going to have to change some of the rest, because Section 5 starts with "compensation" on line 6.

**CHAIRMAN AASHEIM:** Mr. Choate—

**DELEGATE CHOATE:** Section 5—Oh, I'm sorry—okay.

**CHAIRMAN AASHEIM:** Mr. Choate—

**DELEGATE CHOATE:** I stand corrected.

**CHAIRMAN AASHEIM:** Mr. Joyce, this is a technical error. We'll just make that correction, I believe, without any necessary motion. Without objection, we'll do that. On line 2 would be—following line 2 on page 39 will be a number 5, sub. 5. Now, we're back to our original motion by Mr. Joyce that when—that we adopt subsection 4 of Section 4 of the minority report of the Executive Article. As many as are in favor will say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Opposed?
(No response)

**CHAIRMAN AASHEIM:** The motion is carried. And now, Mr. Wilson, do you want to wait and make that a subsection 6?
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, let us just finish with subsection 5, and then we will move out of the Committee of the Whole—

**CHAIRMAN AASHEIM:** All right.

**DELEGATE ESKILDSEN:** —before we go any farther.

**CHAIRMAN AASHEIM:** Without objection, we will continue with subsection 5.
Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Joyce.

**DELEGATE JOYCE:** Now, we're coming to subsection 5, and this is going to be controversial because Mr. Felt is going to move to amend subsection 5, I'm understood, and it's very important. I want to be heard on it myself, and so I think that this is a good place to stop for the evening. We'll start fresh in the morning—if you would indulge the Executive Committee that courtesy, I'd be very appreciative.

**CHAIRMAN AASHEIM:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, I apologize. I thought that you wanted to go through that one and it was the one that Mr. Wilson was talking about that you wanted to take tomorrow. So, with that in mind, I might mention one other thing, that while you're in the Committee of the Whole, you can't adjourn; so keep that in mind, please. I move the Commitee of the Whole rise and report progress and beg leave to sit again.

**CHAIRMAN AASHEIM:** Members of the committee, if a comment is in order, I must say that you've been a very patient crowd. I want to compliment you. The motion is now to recess—to rise and report and report progress and meet again—and beg leave to sit again. As many as are in favor will say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Opposed?
(No response)

**CHAIRMAN AASHEIM:** Motion is carried.

(Vice President Toole presiding over Convention)

**VICE PRESIDENT TOOLE:** Convention will come to order. The clerk will read the report. Several delegates have asked that the report be read, so we will do so. Clerk will read the report.

**CLERK HANSON:** "February 24th 1972. Mr. President, we, the Committee of the Whole, having had under consideration Report Number 4 of the Committee on Executive recommend as follows: That Section 1, subsection 1, of the majority proposal be amended by inserting the minority report on that section in lieu thereof. Amendment made by Delegate Wilson and adopted. Roll call vote was requested by Delegate [illegible]ler, with sufficient seconds, and the following vote was recorded: Ayes 53, Noes 44. At 3:05 p.m., the Committee recessed until 3:20 p.m. Delegate Aasheim in Chair. That the amendment by Foster to amend Section 1, subsection 1, be not adopted: Amend by striking 'superintendent of public instruction'. Roll call vote was requested by Delegate Foster, with sufficient seconds, and that the following—"

**DELEGATE ARONOW:** Mr. President, I move that we dispense with the reading of the report this evening.

**VICE PRESIDENT TOOLE:** You've heard the motion of Mr. Aronow that we move with the dispensing of the reading of the report. All in favor say Aye.

**DELEGATES:** Aye

**VICE PRESIDENT TOOLE:** Opposed, No.

(No response)

**VICE PRESIDENT TOOLE:** Motion carried.

**CLERK HANSON:** "That the Committee rise and report progress and beg leave to sit again. Signed: Aasheim, Chairman."

**VICE PRESIDENT TOOLE:** We will move to Order of Business Number 11, Committee Announcements and Notices.

**UNIDENTIFIED DELEGATE:** Move the adoption—

**VICE PRESIDENT TOOLE:** —you move the adoption, Mr. Chairman?

**CHAIRMAN AASHEIM:** Mr. Chairman, I move the adoption of the report.

**VICE PRESIDENT TOOLE:** Now, you've heard the motion for the adoption of the report. All in favor say Aye.

**DELEGATES:** Aye.

**VICE PRESIDENT TOOLE:** Opposed, No.

(No response)

**VICE PRESIDENT TOOLE:** Motion carried. We'll be under Order of Business Number 11, Committee Announcements and Notices.

There being none, I'll call on Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move we adjourn until February 25th, Friday, 9:00 a.m., 1972.

**VICE PRESIDENT TOOLE:** You've heard the motion for adjournment. All in favor say Aye.

**DELEGATES:** Aye.

**VICE PRESIDENT TOOLE:** Opposed, No.

(No response)

**VICE PRESIDENT TOOLE:** Motion carried.

**VICE PRESIDENT TOOLE:** I beg your pardon, Mr. Jacobsen.

**DELEGATE JACOBSEN:** I just wanted to call your attention to the fact that we're supposed to all have our pictures taken in Convention Hall tomorrow morning at 9:00 a.m.

**VICE PRESIDENT TOOLE:** Pictures tomorrow morning at 9:00 a.m.

(Convention adjourned at 9:20 p.m.)

**February 25, 1972**
**9:10 a.m.**

**Thirty-Second Day**

**Convention Hall**
**Helena, Montana**

**PRESIDENT GRAYBILL:** The Convention will come to order. Ladies and gentlemen, this morning we will take a picture before we convene the session. The Sergeant-at-Arms will stand at the back door and keep people from coming in and out from now on. We would like the side benches cleared, as I guess they are. The pages and—we would like on the back row there. You people on the front desk can be here, but you're not allowed to move about. Please, if you have cameras in the gallery, do not take pictures. Okay, they will take the picture in two segments, a segment on that side and a segment on this side. And smile when your segment is being taken. I'll leave the mike on for you. The Convention will be in session. If you'll please rise, Reverend Harper will lead us in an invocation.

**DELEGATE HARPER:** If you'll close your eyes and picture in your mind the beauties of our state, it might lead you to pray like this with me this morning. Lord God of shining mountain and flashing stream, whose hand has planted with double portion the treasure of nature in this, our state, fashion now a community of people whose character can match the greatness of their land. Lord God of stately fir and large, full pine, who has nested the eagle among the towering peaks, make your children here to grow so straight and tall that their spirits will make their home only in the high places. Lord God of the creative spirit, whose never-ending plan of building spreads onward before us, who planted the will to adventure in the hearts of the pioneers, open our eyes to see this great crowd of witnesses that surrounds us and wake us to the frontier which calls for a still in Montana. Break us loose from the mold of any tradition which would hinder the growth of your community in the hearts of your people. Set our hands and hearts again to the pioneer dream of a brotherhood state and deliver us from the temptation to rest halfway up any mountain, in the name of Him who climbed all the way up Calvary for our sakes. Amen.

**PRESIDENT GRAYBILL:** Now, we can take the roll by voting Aye on the voting machines, please.

**CLERK SMITH:** Delegate Barnard, Delegate Blaylock, Delegate Burkhardt, Delegate Cain, Delegate Cross, Delegate Harper, Delegate Harrington, Delegate Holland, Delegate Scanlin is excused.

**PRESIDENT GRAYBILL:** Who's absent?

**CLERK SMITH:** Delegate Holland, Delegate McKeon.

**PRESIDENT GRAYBILL:** Very well. Take the vote. Mr. Clerk, please show Mr. Holland present.

| | |
|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Present |
| Aronow | Present |
| Artz | Present |
| Ask | Present |
| Babcock | Present |
| Barnard | Present |
| Bates | Present |
| Belcher | Present |
| Berg | Present |
| Berthelson | Present |
| Blaylock | Present |
| Blend | Present |
| Bowman | Present |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Present |
| Cate | Present |
| Champoux | Present |
| Choate | Present |
| Conover | Present |
| Cross | Present |
| Dahood | Present |
| Davis | Present |
| Delaney | Present |
| Driscoll | Present |
| Drum | Present |
| Eck | Present |
| Erdmann | Present |
| Eskildsen | Present |
| Etchart | Present |
| Felt | Present |
| Foster | Present |
| Furlong | Present |

| | |
|---|---|
| Garlington | Present |
| Graybill | Present |
| Gysler | Present |
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Present |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| Harrington | Present |
| Heliker | Present |
| Holland | Present |
| Jacobsen | Present |
| James | Present |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Present |
| Leuthold | Present |
| Loendorf | Present |
| Lorello | Present |
| Mahoney | Present |
| Mansfield | Present |
| Martin | Present |
| McCarvel | Present |
| McDonough | Present |
| McKeon | Absent |
| McNeil | Present |
| Melvin | Present |
| Monroe | Present |
| Murray | Present |
| Noble | Present |
| Nutting | Present |
| Payne | Present |
| Pemberton | Present |
| Rebal | Present |
| Reichert | Present |
| Robinson | Present |
| Roeder | Present |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Excused |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Present |
| Swanberg | Present |
| Toole | Present |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Present |
| Ward | Present |
| Warden | Present |
| Wilson | Present |
| Woodmansey | Present |

**CLERK SMITH:** Mr. President, 98 present, 1 excused, 1 absent.

**PRESIDENT GRAYBILL:** Very well. The journal may so show. Order of Business Number 1, Reports of Standing Committees. There's a report from Style and Drafting, Mr. Clerk.

**CLERK SMITH:** "Mr. President. The Committee on Style and Drafting, Transition and Submission, transmits revision of the above Constitutional Revision Article for consideration of the Convention. Signed: Schiltz, Chairman."

**PRESIDENT GRAYBILL:** And which article is it?

**CLERK SMITH:** The Constitutional Revision Article.

**PRESIDENT GRAYBILL:** Constitutional Revision Article of General Government has been received back from Style and Drafting. It'll be placed on General Orders, printed and placed on your desks.

Number 2, Reports of Select Committees.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** Number 3, Communications. There are no foreign communications. I want to make a couple of announcements during the communications period. First of all, some of you may have noticed that we waged pleasant war on the rest of the Capitol yesterday, and we gave everybody in the parking spaces notice not to park there again and posted their names. So try and capture back your parking positions, and we'll try and hold them for you. There were about 30 cars parked in our parking spaces, and I wouldn't mind if they filled in after you, but some of you don't get here before they do and that makes it hard. Second, I think you should understand now, or might like to understand now, that there will be no night session tonight, and there will be no night session Saturday night, but we will have night sessions again next week if we are not making better progress. Some delegates have suggested that I mention to you that you might spend some time reading the books ahead of time. I don't know that you need to read them ahead of time, but I think you shouldn't amend them until you've read them. (Laughter)

Very well. We'll go on to Order of Business Number 4, Introduction.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** None. Order of Business Number 5, Final Consideration of Proposals.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 6, Adoption of Constitution.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 7, Motions and Resolutions. None.

Order of Business Number 8, Unfinished Business.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** None. Order of Business Number 9, Special Orders.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 10, General Orders.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President, I move the Convention resolve itself in Committee of the Whole for the purpose of handling business under General Orders.

**PRESIDENT GRAYBILL:** The motion is to resolve ourselves into Committee of the Whole to consider the Executive proposal. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** So orderd.

(Committee of the Whole)

**CLERK SMITH:** Mr. President. The following committee proposals are now on General Orders: Executive, Judicial, Natural Resources, Revenue and Finance, Bill of Rights, Public Health, Education, Local Government and General Government. Mr. President.

**CHAIRMAN GRAYBILL:** Very well. It's my understanding that we are on subparagraph 5 of Section 4. Since there was no subparagraph 5 in the majority report, we're in the minority report, and the Chair would call on Mr. Wilson. Do you want us to read it from the rostrum, Mr. Wilson?

**DELEGATE WILSON:** Mr. President. Due to an inadvertency in the printing of the minority report, we left out the duties of the Treasurer. And I have an amendment to put in for subsection 5 of Section 4. I don't know whether you have a copy of it up there or not.

**CHAIRMAN GRAYBILL:** I have subsection 5. The one on auditors is in.

**DELEGATE WILSON:** This is pertaining to the State Treasurer.

**CHAIRMAN GRAYBILL:** Right. I don't have it yet.

**DELEGATE WILSON:** I will read it from here or bring it up to you, whichever—

**CHAIRMAN GRAYBILL:** Mr. Wilson. Do I understand that subsection 5 you want to be on the Treasurer?

**DELEGATE WILSON:** Right.

**CHAIRMAN GRAYBILL:** And then subsection 6 on the Auditor?

**DELEGATE WILSON:** Right.

**CHAIRMAN GRAYBILL:** All right. Will the clerk please read the proposal.

**CLERK SMITH:** "Section 5. The state treasurer shall keep a separate account of each fund, and the legislative assembly may provide further duties by law. Signed: Wilson."

**CHAIRMAN GRAYBILL:** Just a moment, Mr. Wilson. I doubt if all the delegates got that message, because they were not all in their seats. Now, ladies and gentlemen, you're going to have a Section 5, the text of which you do not have because it's not in the booklet. I'll read it once more for you, and then Mr. Wilson will discuss it. "The state treasurer shall keep a separate account of each fund, and the legislative assembly may provide further duties by law."

Mr. Wilson.

**DELEGATE WILSON:** Mr. President. I move that when the Committee as a Whole does rise that they adopt Section 5 of the minority report.

**CHAIRMAN GRAYBILL:** Very well. Is there discussion?

Mr. Davis.

**DELEGATE DAVIS:** Mr. President. I hadn't seen that, so I had no chance to prepare an amendment. I'd like to amend that to provide the State Treasurer shall not be eligible to his office for the succeeding term.

**CHAIRMAN GRAYBILL:** Will you write that out, and I'll do it from here, but will you write that out?

**DELEGATE BOWMAN:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Bowman, just a moment. I understand it to be the sense of Mr. Davis' amendment that he would add a sentence to the proposed Section 5 saying "the state treasurer will not be eligible to his office for the succeeding term."

Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, I rise to ask a question. Are we going to discuss the State Treasurer before we discuss the Auditor, which in my book comes first?

**CHAIRMAN GRAYBILL:** Well, Mr. Wilson, who is the head of the Minority Report Committee, has informed the Chair that he wishes the Treasurer to be Section 5 and the Auditor to be Section 6.

**DELEGATE BOWMAN:** The Auditor—Thank you.

**CHAIRMAN GRAYBILL:** "The state treasurer shall not be eligible to his office for the succeeding term." That's Mr. Davis' amendment.

Mr. Davis.

**DELEGATE DAVIS:** Mr. President. That's the same as the last sentence in the existing Constitution. I think if we have this reluctance to take them out or change the present Constitution, let's leave it like it is all the way then.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I resist the amendment. I think it's our cake, and the modern age says there's no reason why the Treasurer should not succeed himself.

**CHAIRMAN GRAYBILL:** Is there further discussion?

Mr. Arbanas.

**DELEGATE ARBANAS:** I'd like to resist the motion also. During our interviews with the State Treasurer, we tried to investigate that very carefully, and I think the committee as a group could find no good reason for it, especially since there was some hint, at least, that the very best people professionally qualified for that kind of a job simply can't go in for one term—give up a private endeavor, go into public office and then go back to something else. I don't think you'd get the best people.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President. I would rise in opposition to Mr. Davis' motion. Of all the discussion, of talking with county commissioners and people who are interested in the office of State Treasurer and County Treasurer, this is one thing that they've felt—that the Treasurer should be able to succeed himself. In this modern day of accounting, computer systems, and so on, they felt that the experience that was acquired by the person in the office should be continued if the voters felt that he was doing a good job. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Davis' amendment to the minority report on the Treasurer. The sense of Mr. Davis' amendment is to be—is to add a sentence that says, "The state treasurer shall not be eligible to his office for the succeeding term." So many as are in favor of that motion, say Aye.

(No response)

**CHAIRMAN GRAYBILL:** So many as are opposed, say Nay.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it. We're now discussing, again, the proposed Section 5. "The state treasurer shall keep a separate account of each fund, and the legislative assembly may provide further duties by law."

Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman. This amendment says that the Treasurer shall keep separate accounts of each fund, and I observe that in the definition of the duties of the Auditor, which is in the very next succeeding little paragraph we are to consider, it says, "The auditor shall be the custodian of all fiscal records." And I suggest that here is a fatal conflict in the handling of accounts and records, and I do not know how the minority proposes to resolve it, but it seems to me that we have here something that has to be clarified.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** Mr. Chairman. One—the thought of the minority to resolve it is that the following sentences—I think they're lines 2 through 5—will be deleted and that other material will be offered in substitution. If that should fail, then some other means of clearing up that problem could be developed when we get to those succeeding lines.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move, as a substitute motion for the minority report, that the subsection 5 read that "The state treasurer shall have such duties as are provided by law."

**CHAIRMAN GRAYBILL:** Will you write that out and send it up. Mr. Joyce has moved a substitute motion, the text of which is: "The state treasurer shall have such duties as are provided by law." Is there discussion?

Mr. Harper.

Oh, pardon me. Mr. Joyce, do you want to proceed—and then I'll call you, Mr. Harper.

**DELEGATE JOYCE:** Mr. Chairman. The reason I offer this substitute motion is that the Convention has decided to retain the State Treasurer as an elected, constitutional office. I graciously accept the will of the Convention. the current constitution does not give the State Treasurer any specific duties whatever. It simply says there will be a State Treasurer, and it says also that he—all of these officers will have such duties as are prescribed by law. It seems to me that we should continue the same system, rather than trying to give him any specific duties in the Constitution with reference to keeping accounts, and let the Legislature prescribe what the State Treasurer is to do in the future. And the reason for this is that we'll then enable the Legislature to amalgamate the State Treasurer into the reorganization plan that the people have already approved and which are on the books and can make the State Treasurer do what will reasonably fit into the established system.

**CHAIRMAN GRAYBILL:** Now, Mr. Harper. No?

Very well. The question is on Mr. Joyce's substitute motion that the State Treasurer shall have such duties as are prescribed by law, substituting that in place of the language supported by the minority report. All those in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Is there further discussion of what is now the tentative Section 4, subsection 5; namely, "The state treasurer shall have such duties as are prescribed by law." If not, Mr. Joyce, remake your motion that when this committee does arise and report.

**DELEGATE JOYCE:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4, subsection 5, of the Executive Article, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** So many as are in favor of Mr. Joyce's motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it, and so orderd.

Mr. Wilson, shall I call on you or Mr. Felt for subsection 6?

**DELEGATE WILSON:** Mr. Chairman. Mr. Felt has requested permission to present the Auditor's functions.

**CHAIRMAN GRAYBILL:** Very well. The Chair will recognize Mr. Felt for subsection 6 of Section 4.

**DELEGATE FELT:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration subsection or—lines 2 through 5 on page 9—39 of the Executive Committee Minority Proposal—that it recommend the same be adopted and numbered subsection 6.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** As a substitute motion, I move to amend subsection 6 being of Section 4, being lines 2 through 5 on page 39 of the Executive Committee Minority Proposal, by deleting it in its entirety and inserting in lieu thereof the following language and numbering it as subsection 6. Auditor. Would the clerk read it now, please?

**CHAIRMAN GRAYBILL:** Mr. Clerk.

**CLERK SMITH:** "Section 4, subsection 6, Auditor: Subsection 1. There shall be an auditor, who shall be responsible only to the people. He shall audit financial records on behalf of the people of Montana. He shall also make an analysis for the purpose of determining and reporting to the public whether, in his opinion, public funds have been effectively, economically and efficiently administered and expended. These shall cover the executive, legislative and judicial branches of state government, including all administrative offices, boards, branches of state government, including all administrative offices, boards, bureaus, commissions, agencies and instrumentalities of state government. He may be given such other duties as may be prescribed by law. Subsection 2. The qualifications, terms of office and manner of selection shall be the same as for the governor. Signed: Felt."

**DELEGATE FELT:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** Members of the assembly. I requested the permission of Mr. Aasheim and of the Chairman of the committee if I could speak on this from this position, and if no one else objects, neither of them did. I did this partly because it was about 15 years ago that I—the only other time I did this and that was when I spoke on behalf of the first proposal to call a Constitutional Convention. The other reason is that, from where I sit, I must be facing only half of the members of the Convention and have my back largely to the other half. This proposal may be a bit of change of pace. I know that it gets rather wearisome here when we debate all day long, and I, myself, will try to be brief, and the persons who have indicated a desire to support me—some of them have agreed not to discuss the matter and some who will and should will also be brief. This matter did not come out as a part of the Minority Committee Proposal that was in your booklet, due to the fact, as I mentioned the other day, that I was unable to be present at that time; but I can assure you that the members of the Minority Committee Proposal do endorse this in lieu of the language that they had in their committee report. This, essentially, is an effort to expand the office of State Auditor and, particularly, to place in the Constitution a general description of the duties of the office. That is self-evident. The framers of our present Constitution, perhaps, thought it was self-evident, when they designated an official as State Auditor, that he would do some auditing, and in the early days of the state, he did. The first book of the reports of our State Auditor show that he caught one of the early Governors with his hand in the jar, to the tune of $500, and made his report on that. It wasn't long until the Auditor no longer did any auditing, and we have reached a point where, for a period of years, really, the state government did not have what would be considered a complete set of books as were used by businesses that would be, perhaps, three- to five-man size operations or larger, nor did it have proper accounting methods; interbureau or within a department, the accounting methods were reasonably adequate, but there was no correlation between them. And, in regard to budgeting, it was really very sad—or not budgeting is only a part of it. In regard to auditing, I should say, of which budgeting is a part, it was essentially nonexistent. And that is one of the main reasons why I, and others, did feel that we needed to revise our state Constitution. Back at that time, 1957, we did not have an Executive budget, we did not have a Legislative post-auditor, we did not have a functioning Legislative Council, and so on. These things were all either prevented or shaky because of restrictions in our present Constitution. And we would creep out into the legislative halls with a proposal to try to obtain some of the things that we felt were needed to give the people of the state the information they desired and needed to play their role and to give legislators the information that they desired and needed to fulfill their functions. And we did, gradually, obtain first the Legislative Council and, through its recommendations, finally, a Governor's budget from which the Executive Branch becomes responsible. We have now had, for about

4 years, a Legislative post-auditor, who has done a fine job. And if, as you'll recall, we have language in our Legislative Article which authorized the continuation of the interim committees of the legislative body, which would include the committee which deals with this Legislative post-audit and which hires, for a 2-year term, our Legislative post-auditor. In addition, we have wanted to have a fiscal analyst, and it is now my proposal—or our Minority Committee Report Proposal—that we expand the office of Auditor, which is a natural place to place this function. We do not eliminate, by no means should we eliminate, the use of the Legislative post-auditor, but that, in itself, is not everything that we need, and there is no way to guarantee that we will even continue to have what we have today, because the legislative body could, in several ways, trim back the functions of this Legislative post-auditor. This could be done by an appropriation reduction, or it could be done by changes in statutory language which would trim back the scope of the audit reports that he is now able to make. There has been some thought given to the fact that there may be some duplication. This has concerned me. In some instances, there may be duplication of effort by this new functioning Auditor and the Legislative post-auditor. I feel that this is one of the many instances where, if need be, we should sacrifice pure efficiency for the safeguard of the auditing function, and I do not believe that we would actually have duplication in the ordinary situation. I feel that these men—there would actually be four individuals—now functioning much as a team, but each independent of the other. This would be the budget director, the Legislative post-auditor, the director of our Department of Administration and the State Auditor. But we emphasize, in this proposal, that the State Auditor represents the people, because even if the legislators for any reason—perhaps because of a strong Governor or pressure exerted from any direction—might not choose to force out into the open all of the information that they might. Yet, we would have here, an Auditor for the people elected by the people and responsible to the people, and we believe that he would see to it that the people in the state and, therefore all legislators also, did receive whatever information they felt was proper. I could go on at more length, but I feel that the essential element here—the first point is, there must be external auditing. It is not sufficient to have internal auditing. It is not sufficient to have a good set of books, which we are now obtaining, and I'm very grateful to the many people, including the accounting profession in Montana, which has labored long to produce for us a correlated system of double-entry bookkeeping systems for state government. And we do have a good budget department, and we have a fine Legislative post-audit. But we need this type of external auditing to supplement and complete the picture. An example which might be used—it's in today's paper, so I refer to it, but there are thousands of possible examples. There is apparently to be some type of investigation of moneys spent on a building on a campus at the university. This is the type of thing which may be done now. There might be a question of who should do it and whether it's being done exactly in the right manner. An operation like that—an investigation like that—could be handled very readily, I feel, by the office of State Auditor if it is expanded into the size of a job that we contemplate with this proposal. There have not been serious scandals in Montana. There have been a few. The size has not been large, and the number of instances has been very few. At least we hope it hasn't existed and that we just simply don't know about it. But that has not been the case in other states, and these other states, such as Illinois, had the same kind of system that we have today, and that did not prevent improper acts, stealing of state funds, which were not uncovered until long past the time when that should have been uncovered. One of the reasons why is that, because they thought they had machinery set up, they went to sleep, and it didn't function and therefore these things happened. This is why, if we need to err, I say err on the side of overinsurance rather than no insurance. This little hearing that's coming up that I mentioned, too, I understand is going to be taken before the State Board of Examiners. We're going to abolish the State Board of Examiners, and I would question whether that is a proper place to deal with a question like that. But, for lack of anything else, perhaps it's all there is. I could philosophize at some length about the need for this, whether to call it a fourth power, whether we need a fourth power, whether we have a fourth power, because many people claim to be a fourth power—the press sometimes does, and with justification; lobbyists sometimes do, and with some justification; lawyers even claim, and I've heard them, that they can handle this sort of thing, but I contend that if we are serious drafters of a Constitution, we should look at something like this. I would like to call it a responsible innovation, but I'm sure everybody considers their ideas respons-

ible innovations. They're innovations because it's something different from what we have; it's responsible because they think it's needed. But this, while it's as new as tomorrow, is as old as certainly the Republics of Rome and Greece, almost as old as our mountains. We do feel that public officials should be accountable, that this accountability extends to the financial matters, the funds that they handle in trust. We believe that we have this in Montana, but, I can assure you, we do not. And you cannot find anything in our Constitution that guarantees that we will have this type of auditing. It is important, it is needed; and I hope that it meets with your approval.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman. I sent up—I don't know whether it would be a substitute motion for Mr. Felt's motion or not.

**CHAIRMAN GRAYBILL:** Mr. Martin, I just wrote you a note on that, but I haven't delivered it. It looks to me like you need a motion to amend. We have a substitute motion you can amend by deleting Mr. Felt's language and putting yours in if you want to.

**DELEGATE MARTIN:** Can you handle it from there for me.

**CHAIRMAN GRAYBILL:** Yes, for awhile.

**DELEGATE MARTIN:** I'm a neophyte on this

**CHAIRMAN GRAYBILL:** Mr. Martin wishes to make an amendment to Mr. Felt's substitute motion. The amendment would strike the language of Mr. Felt's substitute motion—substitute amendment—substitute section and say, "The auditor shall have such duties as provided by law." So, Mr. Martin's amendment to Mr. Felt's motion—substitute motion—will be to delete the substitute motion's language and add the sentence, "The auditor shall have such duties as provided by law."

Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman. It seems to me that the basic thing that we're here for is to put some fundamentals into the Constitution and to make it flexible, not to go backwards. And I'm sorry that this issue couldn't have been debated more and discussed more within our committee, but, unfortunately, Mr. Felt was unable to be present during the time that we took the deliberations, and this comes as new material. I have endeavored, as much as I could, to get some information relative to the existing status of the various departments of state government, as well as the legislative officers—or audit—and the Legislative Audit Committee. I think that the State of Montana Executive and Legislative branches might be compared to a President and a Board of Directors, with the Legislature as the Board of Directors; and, in this capacity, through my studies and my experience, the Legislature has been the innovative tool for good government in Montana. This goes back to the time of when the first committee was organized to reorganize the government under Sam Ford. Prior to that, Governor Dixon had made some efforts and Governor Stuart had made some efforts to innovate some improvements in the relationship and—between the Legislative and the Executive branches of government. But I think the greatest inroad—or the greatest progress was made probably starting in the 1950's, when a group of senators, of which one was in the hall yesterday and is still a senator, Senator James, initiated some research and some studies and some investigative reports which led to the establishment, eventually, of the Legislative Council. The Legislative Council has been responsible for the improvements and the development of an improved state government, and those of us who had a chance to talk to the Executive heads, as well as the elective officer, had an opportunity to see and know what they could or couldn't do. Presently, the Montana Legislative Audit Act was enacted in 19—I think in 1967—and it provides—because the Legislative Assembly is responsible for authorizing the expenditure of public moneys, designating the sources from which moneys may be collected, shaping the administration to perform the work of state government, and is held finally accountable for fiscal policy, the Legislative Assembly should also be responsible for the audit of fiscal accounts and records, so that it may be assured that the directives have been faithfully carried out. It is the intent of this act that each agency of state government be audited for the purpose of furnishing the Legislative Assembly with factual information vital to the discharge of its legislative duties. We have had some of the most dedicated public servants in the Legislature, who have served as members of the Legislative Audit Committee. Presently, we have Senator Bill McKay, Senator William Mathers, Senator Thiessen, Senator Bertsche, Representative

Gerke, Representative Nichols, Representative Zimmer and Representative Warden, and I would say that there are eight people who are certainly dedicated Montanans and dedicated to the task of insuring that we do get responsible government. And I'm sure that the record of the 32 or more audits that they've made would indicate how important it is that that be continued. Now, to get back to one other thing, the central accounting office was established in Washington, D.C., in 1921, and it has been an arm of the Congress. When the Hawaii Constitution Convention met in 1950, only four states in the Union had Auditors clearly responsible to the Legislature in the performance of the post-audit function. But in 1967, Montana was the 32nd state which established the independent post-audit function within the Legislative branch. Since that time, Maryland, Kansas, Idaho, Wyoming and perhaps one or two more states have added a Legislative Auditor, and that is the function of the Legislative Auditor. Post-auditing is a legislative function, and the auditing authority who performs this duty should be selected by the lawmaking branch. And contemporary literature on the subject indicates that Legislative post-auditing is a trend. There are 35 Legislative audits in the United States; there are 12 elective auditors and, I think, 3 appointed auditors. The State of Michigan had an Auditor for 115 years, and they discontinued the Auditor. This Convention didn't see fit to do that, but I would say that no state—and this is significant—no state in this country has turned to an elected state audit program, in recent years, as the best means of obtaining the independent post-audit. No state has made any organizational change in the location of its post-audit program other than to place it under the responsibility of a Legislative post-auditor. What accounts for this trend, and why is it so completely in one direction? It is because, when you really get down to the relative advantages and disadvantages of electing a State Auditor, the disadvantages far outweigh the advantages, and no state has yet been ready to sacrifice the promises of the Legislative audit program for the uncertainty of the elected auditor system. For instance, the State of Colorado, a certified public accountant was elected to be State Auditor, and he was elected on the promise that if he were elected, he would encourage the abolition of his office. And subsequently, he was made the head—Legislative Auditor and has done a remarkable record. This quotations that I'm giving you are from a Doctor Knighton, who is head of the government department at Brigham University and is regarded as the authority in the United States on the subject. And he said, "Over the past 6 years, I have searched through the records of Constitutional Conventions, state reorganization studies, special research reports, publications by authoratative groups and the writings of numerous authorities, and I have been overwhelmingly impressed with their unanimity of thinking on this subject in favor of a Legislative post-audit program. Auditing is as much a part of an integrated control system in a state as is budgeting. It cannot be separated from the basic pattern of responsibility inherent in the American system of state government." There was intimation that there was all kinds of possibilities and potentials of law violations and—that could be resolved on this, but when you talk to the newly created Department of Administration, when you talk to the newly created—or investment officer of the State Land Board, you begin to find that they have developed their own controls. Mr. Saxby of the Department of Administration has initiated, and has working, a pre-audit program. I asked him, with respect to one report which is now in the hands of the Attorney General, as to how that happened. He says, "Well, it happened because the audit control should have been by the head of the department—or that department." But these things and the kind of people whom we have employed now under the reorganization program are people with integrity, with a reputation and a desire, not to hold a job. Their job is held at the pleasure of the Governor. They can be hired and fired, but most of them will tell you that they can get a job anywhere, under the circumstance, and some of them have been employed from previous administrations. Now, if we look at some of the things that have been happening, and I'll go into that, maybe, a little later, some of the things that have been happening in some of the elective offices, I think you would agree with me that certainly we should not destroy a tool of the Legislature. And I regret that, if we had known that this would come up, that we couldn't have had the benefit of testimony before our committee of Senators McKay, Mathers, Thiessen and Bertsche and Representatives Gerke, Nichols, Zimmer and Warden. I think that they would certainly have been able to give us an insight into it; but, in my opinion, the present Legislative Audit system is the best means if we're going to strengthen the responsibility and the check and balance of government. Today, that is the thing that we're trying to do. We have strengthened the Legislature by providing annual sessions. They're going to be here more often;

the [illegible] to be able to make a better check on the government process and the Executive; and I think that the answer still lies in the Legislative Audit. I hope for the adoption of my motion.

**CHAIRMAN GRAYBILL:** Mr. Artz.

**DELEGATE ARTZ:** Mr. Chairman. I oppose Delegate Martin's substitute motion, support Delegate Felt's. Delegate Aronow has told me not to jump up; if you wait long enough, somebody will say it for you. But I feel, on this occasion , that I should speak. As far as I know, I'm the only certified public accountant who is a delegate. Also, I'm 50 miles from home, and I have my briefcase, so that should make me an expert, I hope. Mr. Felt's proposal does not suggest that we abolish the post-legislative-audit post. It merely will supplement it. The accounting profession in the State of Montana is well satisfied with the work that the post-legislative-auditor has done, but there is no provision that this would be a permanent thing for Montana. It is a legislative act; it could be rescinded. Mr. Felt's proposal gives permanency to the audit function. Delegate Martin compared auditing with stockholders and corporations. Corporations, the large ones, send out proxies. On your proxy, the stockholders elect the auditor, not the board of directors, which is comparable to the legislative body. The board of directors have their own auditors in corporations, who check up on management and give them reports. But the auditor that the stockholders elect checks on both the board of directors and management. We feel that this does that very well. We feel that this post, by expanding the authority and the [illegible] explaining what shall be done by the Auditor, will protect the rights of the people. The old section said that a Auditor was a custodian. We have custodians for buildings also. There's quite a bit of difference between a custodian of records and an auditor. The scope of the Auditor is to check the financial accuracy of the records, see that there was adequate control there, see that the assets have not been dissipated, they have been accounted for, see that the laws have been complied with, and on and on and on. I feel that the State of Montana has taken several great steps forward in the past few years. A uniform accounting system has been established. The post-legislative-auditor has been developed, has been inaugurated, rather. We also have the 20 sections of the Executive Department. We are getting some organization in government, but we still do not have an outside source, an independent source, guaranteed by the Constitution, that will see that these things are done correctly, somebody to protect the people. One of the main things in auditing in corporations is that the auditor, the accountant, must have independence. He cannot be under the control of either the board of directors or management. He must be able to go in, and if he finds that there's a carload of whiskey missing, he tells the people, because possibly it would get somebody in dutch that had hired him. If we have him reporting to the people, have this necessary independence, I think it's good. The last point, the necessity of auditing state funds, was discussed very thoroughly in Revenue and Finance Committee. The committee as a whole felt that this was essential, and this proposal of Delegate Felt goes along with what we've proposed, and I will read that and close. "An audit of the investment program shall be conducted at least annually and submitted to the governor, legislative assembly, and chief justice of the Supreme Court." I certainly hope that you support Delegate Felt's proposal. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Johnson. No. Mr. Jacobsen, excuse me.

**DELEGATE JACOBSEN:** Mr. President, fellow delegates. I agree wholeheartedly with Mr. Felt's proposal. The Auditor, I believe, is one of the most important elective offices in the state. I was an insurance agent for a number of years in Whitefish. That office, then, was very important; and, of course, what is not really well known is the fact that the Auditor is the ex officio Insurance Commissioner. The only change I would like to make in Mr. Felt's recommendation is that it should be, possibly, Auditor and Insurance Commissioner. People by the hundreds have called me, or I've told them by the hundreds where they can get their insurance problems straightened out. And the Auditor has been the one that I have sent them to. I hope that you will consider carefully what Mr. Artz has also said. It is important that the Auditor be accountable to the people, we the people. Thank you.

**CHAIRMAN GRAYBILL:** Therefore, the issue is now still on Mr. Martin's substitute motion to give the Auditor such duties as shall be prescribed by law.

Mrs. Warden.

**DELEGATE WARDEN:** Mr. President. I would just like to rise in support of Fred Martin's motion to delete and say "as prescribed by law."

We know that the Auditor is the ex officio Insurance Commissioner. That is in the statutes. That has been provided for by the Legislature. I would like to say that—are we creating here another monster? We have a wonderful Legislative post-audit. There is provision, by law, for a fiscal analyst, which would be a preaudit sort of thing. I think the Legislature could handle this. I think they should handle it. I think to create another department of government to be a watchdog watching another watchdog watchdog that dog is a rather difficult situation. I think we have what is provided for here. I have talked to Francis Bardanouve, who is one of the people that was interested in this and who started the Legislative post-audit. He agrees with me. He said this is a Legislative Department function. It should not be creating another department in the State of Montana in government, and I would urge you very strongly to consider this before you determine that you are going to have another auditor watching an auditor watching somebody else audit. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman. I believe what we're doing now is really trying to justify what we did yesterday in creating an office of Auditor, when it has been well publicized that it has been a long time since the Auditor audits. Now, I agree with Mr. Jacobsen, and I think almost everyone does, that the Auditor appears to be performing a really useful function as the Commissioner of Insurance. But somehow, we can't justify putting a Commissioner of Insurance on the ballot as an elective office unless we are going to also elect all kinds of other commissioners. We couldn't justify putting him on the ballot as a paymaster. I am somewhat sympathetic with Mr. Felt's idea of assigning to the Auditor, if we're going to keep him named an officer, an Auditor, and keep him as an elected official, something that indicates that auditing is really his function. However, I am also a little skeptical about providing an office that could come to duplicate what is being done by the Legislative post-audit. Incidentally, I understand that of all the officials that were interviewed about their particular office, the Legislative post-audit Auditor was the one who was not at all concerned about keeping his office constitutional. His office is doing a real job, and there's no concern on his part for having it assured in the Constitution. I think that the place of the Legislative post-audit in Montana government is really assured, it has been really well accepted. This was one of the first, one of the really old positions of the League of Women Voters. We supported a Legislative post-audit for a long, long time. We dropped it a couple of years ago because it had been so well established that we didn't think that it was necessary to keep it on our list of support positions. I really think that, under Fred Martin's proposed amendment, we could, maybe, add some reference to an auditing function, but I think that, also, the Legislature could do that. With the Treasurer, we haven't said that he's going to necessarily treasure anything; and I also think that if Revenue and Finance thinks that some kind of an investment function is necessary in this office, that this is one that the Legislature could assign to this office. I'd hate to see anything really locked in, and I think that the interpretation of Mr. Felt's amendment might be interrupted—might come this way. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Roeder.

**DELEGATE ROEDER:** I'm really loath to rise, but I feel I must speak to this—in support of Fred Martin and in opposition to my good friend, Jim Felt. Please look before you leap on this thing. Yesterday, after lunch, this Convention decided the shape of the Executive branch of government on the basis of 90 minutes of debate. Two-thirds of that debate was devoted to Mr. Harbaugh's heroic efforts on his own behalf in dealing with the Superintendent of Public Instruction's office. Therefore, the major Executive offices really have received no debate. Now, that may have been a foregone conclusion, and certainly I'm willing to live with the results of that decision that we made yesterday. But, please, please, do not be stampeded lemming-fashion into creating an office of sniper-soup—super-snoop that we have never considered. If we're going to try to create and innovate, as I think this proposal asks us to do, we had better put it back in committee, we had better open up hearings. Certainly, certainly, this proposal should have witnesses to testify on it. We have had one brief ad hoc committee meeting where this proposal was introduced. It would seem to me the essence of conservatism not to leap into the unknown without careful consideration. Please do not be stampeded on the basis of emotional language into buying something, we know not what.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman. I think we can all appreciate the fact that we've been nervous about voting in a title that does not describe a position. I think there are good reasons for having the State Auditor's position. It's been adequately demonstrated that he does many things for the state and does them well. For one thing, he holds the records. Vouchers and warrants go through his office, and in addition to being this Insurance Commissioner, in fact, and so forth; but because we use the term "Auditor", we're nervous, apparently, about getting him auditing functions, rather than trying to find where the best place to put the auditing function in our whole system may be. I simply rise as a person who doesn't know many things technically about finance, except to say that it seems to me strange that the man who holds the books should audit them. In Illinois, the reference was made to the kind of idea they have, and it was said that this is what we are now proposing—Mr. Felt is now proposing. May I simply remind you that, if my memory serves me correct, recently it was the Illinois Auditor who was caught with 2 million dollars. And I submit to you that simply because a man is elected by the people, his honesty as a politician is not necessarily guaranteed.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I first came to this chamber here in 1951 as a legislator, and I've been following the legislative process rather closely ever since. I've gotten to know an awful lot of the legislators, and I think I can say that Jim Felt is one of the authorities on the fiscal matters of this state. There may be one or two others, one of whom would be my partner, John Sheehy, and one Groff from over in Ravalli County. I think he knows what he's talking about, and I think his position is well taken. And I therefore resist the motion of Mr. Martin. Yesterday I voted against the retention of the Auditor as a constitutional officer on the ground that the Auditor formed no policy, had no reason to be responsible to the people and was a totally unnecessary constitutional officer. I would urge the position taken by Mr. Felt for the reason that this would give the man something to do and would insure his responsibility to the people. However, I think the most chilling point that Mr. Felt made—we're all agreed that some sort of audit is necessary—and his most chilling point was that we cannot, in any way, be assured that the post legislative-audit will continue in its present form or that it will not be diluted in the future. Accordingly, I support Mr. Felt's position.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman. I want to point out a few facts to this assembly about this situation, although I'm not altogether persuaded that we're as hungry for facts as we are to conserve our initial opinions. I think everybody agrees that an audit function is required, and it appears to have been impressed upon the Legislative branch, the people's representatives, quite a while ago and seems to be functioning. The problem now before the house is: how many layers of audit shall we have? There—facts are that there does exist the Legislative preaudit. There exists the Legislative post-audit, and in addition to that, any state agency that receives federal funds receives also a federal audit, by the federal people. HUD, HEW, et cetera, conduct their own audit of the functions of the state whenever federal funds come here, so the likelihood of embezzlement and defalcation seems to be pretty well safeguarded. The comment is made that it is necessary to put this in the Constitution in order to protect the people. I just cannot follow that, because we have worshipped at the shrine of the legislators as being those that the people elect and who represent them, and we're making them very visible and responsible to the people, and it is inconceivable to me that those we vote for every 2 years should suddenly become some kind of alien force whom we can no longer trust and whom we may think will abandon any concern for fiscal responsibility. I think that's just a misconception. But the thing I really want to call the attention of the house to is something that was not presented in the original discussion at all and was only mentioned rather in passing by Dr. Roeder, who was urging us not to jump too hastily. If you will look at the second half—the second two-thirds of this proposal, you will find that it ceases to discuss the matter of auditing and goes on into the business of requiring this officer to analyze, for the purpose of reporting to the public, whether in his opinion public funds have been effectively, economically and efficiently administered and expended. Economically and efficiently, effectively—this makes this man, it seems to me, a sort of political overlord in Montana. His functions cross over those of the Executive branch, of the Legislative branch, of the Judicial branch, via the precise wording of the thing here. It seems to me that this creates a sort of rival Governor, so to speak, and I think it is very easy to imagine that such a person, with the tremendous fund of information which would funnel in to him by virtue of the auditing function, would find a way either to serve as the great supporter of the Governor or the great supporter of the Governor's opponent or, perhaps, of becoming a political giant in his own right in some time in the future. And in this respect, it is truly an innovation. It is not duplicated in any other Constitution in America, as far as I'm concerned. And I am just very anxious, when we're treading on the borderline between winning or losing this Constitution, that we not now do something here, by creating a political overlord, that would so frighten some more people that they would conclude we had forgotten what we came here for. Now, as far as constitutional provision is concerned, assuring to the public the security of its funds, I find in the Revenue and Finance Committee Proposal, Section 12, some very precise and comforting language that applies to the whole range of the public funds, that are the subject of this proposed amendment. It just says, "The legislative assembly shall enact the necessary laws"—shall enact, mandatory—"to insure strict accountability of all revenues received and moneys spent by the state, subdivisions and districts thereof." So here is a constant mandate upon the Legislature to be true to the public trust, and it seems to me, that this is the kind of constitutional drafting that is adequate to take care of this matter.

**CHAIRMAN GRAYBILL:** Mr. Rygg.

**DELEGATE RYGG:** I think Mr. Felt's proposal has merit. The testimony we received in our committee relative to the investment fund showed that we're going to have to have more audits than the Legislative post-audit Committee can do. We felt that with having about 300 million dollars, we should certainly have at least an annual audit; some of them thought even oftener than that. The Supreme Court—the judge who—justice who testified there, was very—he felt very strongly that an elected official would really be more responsible than an outside agency. I suppose this would satisfy his requirements because he did feel that an elected official had more integrity than anyone else, but we will have to have outside audits. We're going to have to spend more money one way or the other, because if the Legislative post-audit can't do it, they're going to have to hire firms of outside accountants to do it. So, I don't exactly know how this would work out in the future. I don't know if I can tell exactly how it's spelled from this proposal, but I do believe that there is room for an outside audit and, in fact, an outside auditor is really going to be necessary as far as that large investment fund is concerned. So I do believe this has merit.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President, I agree with Delegate Martin. I see some good points to Representative Felt's idea, but I think you have to realize that the Legislature, in the end, is going to control whatever happens because all appropriations must be made by the Legislature. Now, I remember at times when Johnny Holmes was Auditor and he wasn't getting along with a few friends of mine up here in this House of Representatives and they just cut him to ribbons. We'd try and resurrect him over in the other body. Now, I think that it would be very well to leave this to the Legislature. Now, the Legislature may, in its wisdom at some later time, decide that they want the Auditor to be the Legislative Auditor. I can't see it, but this could happen. I hate to tie the hands of the Legislature down so tight as this. You're forcing them to do things, maybe, that in 1990 or the year 2000 wouldn't be right. I think it would be well if we just left this to the Legislature to determine the duties of the Auditor. Now he is an Insurance Commissioner. This is put in by the Legislature; I want it left there—very keenly want it left there. I think it would be well if we looked at it that way and just remember the Legislature, through the power of control of appropriation, can either go out here and make the Auditor stronger or weaker. And, as to the answer of that the Legislature might not get the appropriations, having been a legislator, I am sure that the Legislature can tell the Governor "You won't get your appropriations until we get ours signed." Now, that's another little prerogative that this Legislature has, so I think it should be left to the Legislature.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I feel compelled to speak in opposition to this very strongly because I have been the Chairman of the Executive Committee, and while what I have to say has been said before, I've jotted down here nine reasons I think this should not be done. First of all, it's creating a new office on the spur of the moment, and if there's anything more foolish than doing that, I don't know what it is. If we're going to [illegible] ought to think about it, we ought to study it; and we just don't have the time to do it. And I submit this body doesn't have the confidence to do it. And I don't mean that offensively to any of you, but it just is that none of us are thoroughly expert in state government to that extent, and I think that it should be studied for many years, or months at any rate, and left to the Legislature. Secondly, it could very well disrupt the whole reorganization program that has been recently put in, and which the Executive Committee did not touch, and we could then be doing more harm than good. We could be setting back the efforts of all these people through the years to actually reorganize the Executive Department and to bring it into state government. If it is a good idea, I submit that the Legislature will do it. As Mr. Mahoney so ably pointed out, if it is a bad idea, they will not do it. Even if we think it is a good idea, the legislature can still kill it by not funding it. Number four, I think it is the most radical thing we have yet proposed in the Convention, and while I might be labeled a radical by some, I think that if this were to come out in the Executive Article, and even though I'm the Chairman of the Executive Committee, it would be to my personal dishonor for the rest of my life to do this sort of thing. Number five, as Mr. Roeder has pointed out, we have given no opportunity to the state officials to oppose this plan; it would be the most flagrant violation of due process [not] to allow people who know something to offer what they do know. Number six, it would be a duplication, and we would be creating a duplication on the spur of the moment without knowing what the cost of it might be, and cost is important. Again, if it's worth the cost, it ought to be studied and see if it's worth the cost, and the Legislature can do that. I come back, number eight, to the fundamental principle of constitutional law the world over, that the Legislature is the will of the people. Whether they don't do what I like, it's because the people don't want to do what I like. If I lose in one session of the Legislature, I can keep coming back until I get my way. If it is a good idea, I may eventually persuade the peoples' representatives to pass it. If, after it's in effect, it's found out to be a bad idea, the peoples' representative can repeal it. That is the inherent flexibility that must exist. It is the American way of life in the system. For many years it took to get legislation through Congress. They keep fighting. They put it in. When it's bad, they repeal it. Just because the Legislature doesn't do what you want doesn't mean that it's bad. The Legislature is the will of the people. You've got to trust the Legislature. That is fundamental. What we've done here is so far, is to enable the Legislature to discharge its function more efficiently. I think that's the greatest step that we've taken in the Convention, and I think it would be terrible to reverse that trend and to, in effect, destroy the good we've done so far. Number nine, I think that it's perfectly clear that we voted yesterday to keep this—the state auditor in the Constitution, because, very frankly, he is an Insurance Commissioner. The insurance agents of the state are satisfied with him, and we did it because we were afraid we might turn all those insurance agents against the Constitution. But the fundamental point is: let us keep doing exactly what we are doing as long as we're retaining him as a constitutional officer. In the present Constitution, he has no constitutional duties at all. He just has duties prescribed by law, and I think that it should be retained that way, being that we have decided to retain it as a constitutional officer. Now, if I have been hard on my idea of my friend, Mr. Felt, I respect him; he is an able legislator, and I just submit it's unfortunate that he was absent and couldn't have put this into the mill beforehand so people could have had a chance to think about it. And it isn't that maybe it isn't a good idea; it may very well be a good idea; and I think that maybe Mr. Felt can present it at the next session of the Legislature and see if it is a good idea. If the Legislature thinks it's a good idea, they will adopt it; if they think it is a bad idea or if they think the benefits to be gained are not worth the cost, they may reject it; they can study it. It is the most sensible thing, I submit, to let this matter to the Legislature and to retain our current Constitution. Thank you, Mr. Chairman.

**DELEGATE SKARI:** Mr. President. I think, too, that it is unfortunate that this was not presented earlier in the committee. It does seem to have some merit. However, I think it does make substantial changes in the entire committee report and it can change other factors in the report. I think a coherent, overall plan is necessary. For that reason, I support Mr. Martin's amendment to allow the Legislature to determine these duties by law. I think Mr. Mahoney stated that the Legislature can strengthen the Auditor's office. I would rather not make a decision in an hour which can send repercussions all through the state government. I think I'm becoming more and more hesitant about making a decision simply with an hour or two's notice, and for that reason, I support Mr. Martin

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I also support the position of Delegate Martin. I do not see any necessity of this matter being placed in the Constitution, and if it is, Delegate Garlington has also pointed to a way in the direction given to the Legislature in the Revenue and Finance report. I'm also impressed with Delegate Garlington placing his finger upon the possibilities of building up a political power in this office of the Auditor. Presently, we have—everyone recognizes the need for this audit. We—the Legislature recognized it several years ago, I believe in 1967, when we established the office of the Legislative post-audit. Since then, everyone seems to agree that it has been working splendidly, the only criticism being that it has not been able to make audits often enough. This can be cured by adequate appropriations being made by the Legislature for this purpose. The Legislature has a committee, which is composed of bipartisan members of both the House and the Senate, who watch over the operations. Thus it is a bipartisan direction of the matter. If you create another office of audit, which is an elective office, sometime someone who has unscrupulous political aspirations may decide to use the office as a club. This was indicated also by Delegate Garlington, and I think his criticism possesses great merit. I support the substitute of Delegate Martin.

**CHAIRMAN GRAYBILL:** Mr. Berthelson.

**DELEGATE BERTHELSON:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berthelson.

**DELEGATE BERTHELSON:** I want to say—state my position in six words. I support Mr. Martin's substitute motion. Thank you.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Martin's substitute motion for subsection 6 of Article IV.

Mr. Felt.

**DELEGATE FELT:** Mr. Chairman. I hesitate to take any time, but it could be that this is the most appropriate time for me to endeavor to answer some of the comments that have been made contrary to this proposal. Naturally, I respect the opinion of all of the delegates who disagree, as well as those who agree with me on this. On the matter of time, I'm sure that we all regret that our time is limited, but that we were given a job and a period of time in which to do it. We are asked to present an improved state Constitution to be considered by the people of the state, and we have to get at it. I am somewhat bemused by reference to this as the most radical proposal. Perhaps that takes the heat off some other people who might have been fearful that their ideas were going to receive such a tag. I can assure you that the Legislative post-audit was considered extremely radical when it was proposed and that it did not have smooth sailing through the Legislature and that it still has sleeping resistance within the Legislature and that it could run into troubles. But I do not feel it is radical. There is some elements of innovation in this. One of the most important ones I will simply mention because it has been dealt with about sufficiently. This places it in the Constitution where it belongs. In addition, this is good business; simple; that is, generally not thought to be too radical. It is only considered radical, I think, in the sense that there will be resistance from those who are going to be audited. They may think that it is a radical thing to do. As to disrupting Executive Reorganization, I doubt that it will disrupt it. Why would good auditing—complete auditing disrupt it? If it needs to be disrupted, then let it be. Is this a new office? We are told the Legislative post-auditor is a great thing. We are told that this will be a duplication, and then we are told this is a new office. What kind of paradox is that? Essentially, I would say for the consideration of all the delegates, this is primarily needed in the Constitution because it is good business. Secondly, it is needed there because the people themselves will feel safer it they know, first, that we thought about good auditing and requiring it in the Constitution and, second, that we did something about it. When we delete the state examiner—the State Board of Examiners and we continue the office of State Auditor but, apparently with the supposition on the part of a few that this is simply a sop to continue the administrative duties that he now performs, I say the people are going to wonder why we did not, in fact, make an auditor out of the State Auditor. This, I am sure, was not considered too radical when our Constitution was adopted 90 years ago and that they did intend that the Auditor would do some auditing. I do not believe it too radical for the people or for us today, nor do I think that we should kill this idea simply because there is a time limitation. I can assure you that this was considered. It was discussed considerably at our committee meetings. This is a part of the minority proposal which has been given rather favorable consideration by this Convention, and it has been considered by many individuals over many years. I will not say more, although I would wish too that there was time to discuss this in greater depth, to discuss such things as performance auditing. I feel it is necessary to say that the provision now resting in a proposal of the Revenue Committee is admirable. It does not go as far. It uses the phrase "strict accountability." This, in auditing terms, is a limiting feature, and while it would do part of what we are talking about here and while I do not care whether this is placed finally in the Executive Article, in the Legislative Article, or in the article dealing with Revenue and Finance, let's get it in. We do not know what will happen with our proposal on Revenue and Finance, and we can let the Style and Drafting Committee or the body decide where best to place this. But by all means, I hope that the Convention will guarantee to the people, and to ourselves as part of the people, that we have required that the manner of auditing—external auditing, I don't—I will not go into a fine definition of the differences between preauditing, post-auditing and performance auditing, but external auditing is a term I will use. And that is what we need and that is what this will give us in a permanent form.

**DELEGATE KELLEHER:** Mr. Chairman. I am torn between the arguments of Delegate Martin and my learned brother Felt, and I cannot make an intelligent decision at this time. And I move, therefore, that this matter be passed over until the time that we consider, in the Committee of the Whole, Mr. Rygg's proposal on Revenue and Finance.

**CHAIRMAN GRAYBILL:** Your proposal is to pass this on to Revenue and Finance, is that right?

**DELEGATE KELLEHER:** Yes, sir.

**CHAIRMAN GRAYBILL:** All right, Mr. Kelleher's motion is to pass Section 4, subsection 6, to Revenue and Finance. It's apparently a—I would consider it a motion to re-refer but we've re-referred it to Revenue and Finance instead of to Executive.

Mr. Wilson, do you really want to debate this? All right.

Mr. Wilson.

**DELEGATE WILSON:** Mr. Chairman. I would resist Mr. Kelleher's motion. I think at this time that we are discussing the Executive branch. We have some comments on the Auditor in the minority report, and if Mr. Kelleher's motion is resisted, I will present them at that time.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mr. Kelleher's motion to pass Section 4, subsection 6, on the Auditor, to the Revenue and Finance Committee, to re-refer it to the Revenue and Finance Committee, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and so ordered. We're not debating Mr. Martin's amendment that the duties of the Auditor be prescribed by law.

Mr. Simon.

**DELEGATE SIMON:** Mr. Chairman. I have to go to the dentist in about 5 minutes, and I want to make a long speech. I support Martin.

**CHAIRMAN GRAYBILL:** All right. So many—

Mr. Wilson.

**DELEGATE WILSON:** Mr. President. I would like to read, at this time, comments on the minority report, page 50. We say, in addition to the language of Section 4 proposed by the majority in subsection 5, we have provided for the duties of the Auditor so that its office may be strengthened and our citizens may be assured that there will always be a completely independent elected Auditor, free of political pressure and responsible to the electorate to protect their fiscal affairs. The creation of a gubernatorial-appointed department head as a complete repository of all the state fiscal and audit functions is an overcentralization of power and an open invitation to corruption. Montana, even under its present system, has recently experienced two separate embezzlement-type situations. One was uncovered by the Bank Examiner's office; the other by the State Auditor's office. Neither were in existence for a particularly long time, nor were the losses particularly large before their discovery. Due to the relatively fast discovery of these transgressions, full restitution was made possible. Therefore, it is obviously—therefore, it is very necessary to retain control. Obviously, any system of control which vests total control in one person or department is not a good system of control and, in fact, would invite misuse. I would like to quote from a book that I was presented with yesterday, and it says, in fact, this—

**CHAIRMAN GRAYBILL:** Mr. Wilson, may I interrupt you? How much do you expect to read from the book; just a sentence or two?

**DELEGATE WILSON:** Just a few sentences.

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE WILSON:** "...state auditor must obviously be free from the influence of those whose accounts they audit, but their independence from the legislature is also considered to be justified on the grounds that political parties might otherwise bring pressure to bear on them." Mr. Chairman, I move that this body consider the minority report.

**CHAIRMAN GRAYBILL:** You can't move it, but we're on Mr. Martin's amendment to the substitute motion and the Chair would like to put the question—No. Now, wait a minute; that's Mr. Felt's.

Mr. Martin, are you ready to vote?

Very well. The question is on Mr. Martin's amendment to the substitute motion which has the effect of making Section 4, subsection 6, on the Auditor, read as follows: "The auditor shall have such duties as provided by law." So many as shall be in favor of that proposed wording, say Aye and—vote Aye on the voting machines, and so many as shall be opposed, vote No.

Mr. Martin, for what purpose do you rise?

**DELEGATE MARTIN:** I am not ready to vote.

**CHAIRMAN GRAYBILL:** Mr. Martin, I asked if you were ready to vote and I thought you said yes, but I'll cancel the vote and we'll start over again.

Mr. Martin, you may close.

**DELEGATE MARTIN:** I agree with the reference in the Revenue and Taxation article, that it should be left to the Legislative Assembly. The State Auditor tells me that the cost to initiate this would be from three hundred thousand to five hundred thousand at a minimum. The Auditor, as presently Commissioner of Insurance, doesn't use CPA's to make the audits of the various insurance companies. There is passed around here a little item, "Blessed is the man who, having nothing to say, abstains from giving in words evidence to the fact." Thank you.

**CHAIRMAN GRAYBILL:** For what purpose do you rise, Mr. McKeon?

**DELEGATE McKEON:** To be recorded as present, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, you're present and may vote.

The voting machine is now open to vote on this for opposition. All those that are in favor of Mr. Martin's proposal to make the Auditor's duties as provided by law, please vote Aye, and those opposed, vote Nay. Have all the delegates voted? Does any delegate wish to change his vote? Please record the vote.

| | |
|---|---|
| Aasheim | Absent |
| Anderson, J. | Nay |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Aye |
| Choate | Nay |
| Conover | Aye |
| Cross | Aye |
| Dahood | Absent |

| | |
|---|---|
| Davis | Aye |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Aye |
| Graybill-Chairman | Aye |
| Gysler | Absent |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Aye |
| Harbaugh | Absent |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Absent |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Ryan | Nay |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Absent |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Aye |

**CHAIRMAN GRAYBILL:** Mr. Woodmansey, for what purpose to you rise Mr. Woodmansey?

**DELEGATE WOODMANSEY:** Mr. President. Due to the change in seating, I've voted and it shows in Mr. Scanlin's spot. I just wasn't thinking and I want—

**CHAIRMAN GRAYBILL:** I understand. We'll change your vote.

**DELEGATE WOODMANSEY:** I'm sorry about it. I'll try to go back to the other seat until the board is changed.

**CHAIRMAN GRAYBILL:** Mr. Clerk, strike Scanlin's name, he's absent today anyway, and put Woodmansey there; and we're all right until we correct it at noon. Will the clerk announce the vote.

**CLERK SMITH:** Mr. President, 62 voting Aye, 31 voting No.

**CHAIRMAN GRAYBILL:** 62 having voted Aye and 31 No, the motion carries. Members of the committee, you have before you then, on the motion of Mr. Martin that when this committee does arise and report, after having under consideration Section 4, subsection 6, that it recommend that this language be adopted. So many as are in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered. Mr. Habedank has a proposed amendment for Section 7. May I read it, Mr. Habedank?

**DELEGATE HABEDANK:** Please.

**CHAIRMAN GRAYBILL:** Mr. Habedank proposes that Section 7 read: "The superintendent of public instruction shall have such duties as are provided by law."
Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman. That's subsection 7 of the—

**CHAIRMAN GRAYBILL:** Right.

**DELEGATE HABEDANK:** —section we're on. The purpose of this amendment is that we, in our wisdom, determined that the Superintendent of Public Instruction should be an elected officer specified in the Constitution. If we're going to spend that space on it, I think we should also give it the dignity of having those duties which are prescribed by law. At the present time, it's ignored in the Constitution.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mr. Habedank's amendment that we add a subsection 7 to say "The superintendent of public instruction shall have such duties as are prescribed by law", please signify by saying Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.
(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Mr. Habedank—No, I'll put it myself. Members of the committee, you now have before you, on the motion of Mr. Habedank that when the committee arise and report, after having under consideration Section 7, that they recommend it do pass. All those in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** So ordered. The Chair is now on Section 5 of the majority report, on page 6. Will the clerk please read Section 5, sub. 1.

**CLERK SMITH:** "Section 5, sub. 1, Compensation. Officers of the executive department shall receive salaries provided by law, which may be increased but not decreased during their term of office." Section 5, subsection 1, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 5, subsection 1, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. This section amends the present Constitution to provide that the salaries of the elected officials may be increased during their term of office, but not decreased, which is exactly the reverse in the present Constitution. It's self-evident what we're doing. The comments in the first two paragraphs of the majority report cover the thinking of the committee. I will not read them into the record, and I will not speak further on it unless there is opposition.

**CHAIRMAN GRAYBILL:** Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman. I move to amend Section 5, subsection 1, page 6, by placing a period after the word "law" in line 5 and deleting the remainder of subsection 1.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Nutting's amendment is to put a period after the word "law" on line 5 and delete the language "which may be increased but not decreased during the term of office."
Mr. Nutting.

**DELEGATE NUTTING:** My comments will be very brief. If there has been an injustice for the past 80 years that's penalized the officeholder, I see no reason why we should compound the issue by doing an injustice to the taxpayer for the next 80 years. Let's put both on an equal basis, both shares the ups and downs. Thank you.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mr. Nutting's amendment to put a period after the word "law" and strike the words "which may be increased but not decreased during the term of office", signify by saying Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it. So ordered. The issue is on Section 5, subsection 1, which now reads: "Officers of the executive department shall receive salaries as provided by law."

Mr. Joyce. Is there further discussion?

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman. In view of the action which was just taken, I am wondering what the result of this next vote would be. Could you explain it? We would have salaries provided by law (Inaudible)—

**CHAIRMAN GRAYBILL:** It means that the Constitution would say that the Legislature would set the salaries.

**DELEGATE HABEDANK:** It's too late to argue about the other, so I guess I'll sit down.

**CHAIRMAN GRAYBILL:** All right. Members of the committee, you have before you, on the motion of Mr. Joyce that when this committee does arise and report, after having under consideration Section 5, subsection 1, as amended, that it recommend the same be adopted. So many as are in favor of that motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** So ordered. Will the clerk read subsection 2?

**CLERK SMITH:** "Section 5, subsection 2. No elected officer of the executive department may, during his term, hold any other public office or receive compensation for his services from any governmental agency. He may be a candidate for any public office during his term." Subsection 2 of Section 5, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 5, subsection 2, that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** I have to confess that I thought that first section would go through without any problem, being that the committee was unanimous, both minority and majority, but it hasn't, so now we're on line 21 of page 22. The second paragraph, which is what we're now considering, the committee says as follows: It makes it clear an elected official cannot hold two public offices at the same time, nor can he be on two government payrolls or receive compensation from the federal and state government for performing governmental duties. It also clears any ambiguity that arises from the last sentence of the present Article VII, Section 4, and makes it clear the officers of the executive department can seek another office without resigning. Upon election, of course, because of the first sentence, he must resign or decline one or the other.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President. Of course, this should go through without any problem except we have placed the Legislature in a position of fixing anyone's salary; if they don't like them, they can now cut it down to a dollar. They may need another public officer. I support the majority, but I think our last action was ill-advised.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you subsection 2, on the motion of Mr. Joyce that when this committee does arise and report, after having it under consideration, that it recommend the same do pass.

For what purpose do you rise, Mr. Kelleher?

**DELEGATE KELLEHER:** I'd like to ask a question of Mr. Joyce, if I could, please.

**CHAIRMAN GRAYBILL:** Very well. Please try to get up before I try to put the—

**DELEGATE KELLEHER:** I tried.

**CHAIRMAN GRAYBILL:** —question next time.

**DELEGATE KELLEHER:** I tried to, but—

**CHAIRMAN GRAYBILL:** All right. That's fine. Mr. Kelleher, go ahead.

**DELEGATE KELLEHER:** —you swing a fast gavel, Mr. Chairman.

**CHAIRMAN GRAYBILL:** (Inaudible)

**DELEGATE JOYCE:** I yield.

**DELEGATE KELLEHER:** Mr. Joyce, no elected officer may receive compensation for his services from any governmental agency. I'm just concerned with National Guard Officers. For instance, my brother Pete, down the row here, is a National Guard officer. Could he be Governor and still hold his commission? Or say, Auditor, or something—a governmental agency, would that be—

**DELEGATE JOYCE:** He could be Governor and he would then be, maybe—statutorily, he'd be the Commander of the National Guard, but he couldn't get any extra salary other than his Governor's salary for being the Commander of the National Guard.

**DELEGATE KELLEHER:** What if he were State Treasurer?

**DELEGATE JOYCE:** He couldn't either, under this section.

**CHAIRMAN GRAYBILL:** Mr. McCarvel.

**DELEGATE McCARVEL:** Would Mr. Joyce yield to a question?

**DELEGATE JOYCE:** Mr. Chairman, I will.

**DELEGATE McCARVEL:** Does this remove attorneys that are holding office, such as legislator, from being retained by any of the agencies of the state government?

**DELEGATE JOYCE:** Well, the section says, Mr. McCarvel, "no elected officer of the executive department", so it doesn't pertain to the Legislative Department.

**DELEGATE McCARVEL:** Thank you, Mr. Joyce.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you subsection 2 of Section 5, on the recommendation of Mr. Joyce that when this committee does arise and report, the same shall be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it. Will the clerk read subsection 1 of Section 6.

**CLERK SMITH:** "Section 6, subsection 1, Vacancy in Office. If the office of lieutenant governor becomes vacant by his succession to the office of governor or by his death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office for the remainder of its term." Section 6, subsection 1, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6, subsection 1, of the Executive Article, that it recommend that the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. This section presupposes that the Governor and the Lieutenant Governor will run as a team. It was therefore thought desirable to allow the Governor to appoint his own teammate for the remainder of the term when a vacancy exists in the office of Lieutenant Governor. However, with the other officers, we followed the established pattern of requiring election if the vacancies occurs in the first half of the term. Now, in this connection, I may as well—no one is paying any attention; they're just voting everything up and down. This has been called to my attention; this creates some problem. Under the current Constitution, we elect a Lieutenant Governor independently of the Governor. So the current Constitution provides that if, in the first 2 years of the term, the Governor dies, that elected Lieutenant Governor then becomes the Governor. Since we are changing the system—now we are going to have the Lieutenant Governor and the Governor run as a team. A vote for both of them is—you're only allowed one vote; you must take the ticket as arranged, and, of course, presumably, the people, if they don't like the Lieutenant Governor nominee, they may vote against the Governor on that account. But, at any rate, they are voting for the two as a team, and so, the people have elected them. However, if the Lieutenant Governor dies, then we thought it consistent to say that he should pick another teammate because he picked the teammate to begin with. And we are following the present system that allows him to serve the remainder of the term. It was discussed in committee; the theory—the consensus of the committee was that, since he was a teammate, that the Governor would pick a man, if the Lieutenant Governor died, who had his same political philosophy; since they had just been recently elected at the polls that this man would then carry on the program that the Governor had accepted in the event the Governor should die immediately after appointing a new Lieutenant Governor. That's the thinking of the committee, and that's the way the section reads, and I submit it for your consideration.

(Committee of the Whole Chairmanship assumed by Mr. Aasheim)

**CHAIRMAN AASHEIM:** Mr. Graybill.

**DELEGATE GRAYBILL:** Mr. Chairman, members of the Convention. I've asked Mr. Aasheim to take the Chair so that I might make an amendment here. I'm one of the persons, at least who spoke to Mr. Judge about this, and I'm concerned about one thing in this language, and that is that it says that if the Lieutenant Governor becomes the Governor, he may appoint someone to replace him as Lieutenant Governor. I think we should—I will move to amend that by adding, at line 15, an amendment to Section 6, sub. 1, after the word "office" to read as follows—strike the rest and read as follows: "until the next succeeding general election, when a replacement shall be elected to serve the balance of the term"—"until the next succeeding general election, when a replacement shall be elected to serve the balance of the term."

Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Graybill.

**DELEGATE GRAYBILL:** What concerns me is that, if the Governor died or resigned or for any reason didn't take office early in his first term, the Lieutenant Governor would then appoint a replacement. If, then, a senator died or a congressman died—as we are all aware, the Governor often likes to move up—he could resign again, have the Lieutenant Governor, who is now an appointed man, become the Governor, and he go on to Washington. At this point, we have, for a long period of time—over 2 years—an officer as Chief Executive of this state who was not elected by the people. It's true, they run as a team; I'm in favor of the team idea, but it does not seem to me right that we should let someone be the Chief Executive of this state who has been appointed rather than elected past a general election. That's all I have to say.

**CHAIRMAN AASHEIM:** Any discussion on the motion of Mr. Graybill?

Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. Chairman. Would Mr. Graybill yield to a question?

**CHAIRMAN AASHEIM:** Will Mr. Graybill yield?

**DELEGATE GRAYBILL:** Yes, I'll yield.

**DELEGATE McCARVEL:** What would happen if a Republican was in power and he took the job as senator and the Lieutenant Governor was moved up? Then who would run for election, just Republicans?

**DELEGATE GRAYBILL:** No, I think that—

**DELEGATE McCARVEL:** Well, you'd have to keep the team, the political team together.

**DELEGATE GRAYBILL:** May I answer your question now?

**DELEGATE McCARVEL:** Yes.

**DELEGATE GRAYBILL:** Okay. No, I think that if the Lieutenant Governor has now moved up and he has appointed a man—that's my situation—and the Lieutenant Governor has now gone on to Washington and the appointed Lieutenant Governor is Governor. Then, at the next general election, they should have to run. If it was less than 2 years, at the next general election, they'd run as a team; but if it was—if the Governor's term wasn't up, it's the Lieutenant Governor we're replacing. Then, we would just have a Lieutenant Governor on the ballot for that second-year election. I just don't like to go past a general election with an appointed—No, I'm sorry; I've explained that wrong. The Governor would then run, right. The Governor would then run—or should then run and not go past the general election. Now, I don't know if my amendment does it; maybe I haven't thought it through, and perhaps we should think about that. But my point is that I don't like to see a situation which would allow an appointed official to govern this state past a general election, because that seems to me to be antidemocratic, with a small "d".

**DELEGATE McCARVEL:** Mr. Chairman. Would Mr. Graybill yield to another question?

**CHAIRMAN AASHEIM:** Will you yield to another question Mr. Graybill?

**DELEGATE GRAYBILL:** Yes, sir.

**DELEGATE McCARVEL:** Would, then, when the next—we'll say that it became vacated in 2 years, and then at that time, would the office be declared vacant and a new election held, so that there would be Republicans and Democrats or Independents running for the office?

**DELEGATE GRAYBILL:** It would seem to me that if we got past—if the vacancy occurred in the second half of the Governor's term, that it automatically corrects itself at the next general election.

**DELEGATE McCARVEL:** Right.

**DELEGATE GRAYBILL:** It's only when the vacancy occurs in the first half of the Governor's term, that I'm concerned. If that happened, this appointed man—I don't mind him being appointed and serving out some part of a Governor's term; that might be necessary—but I don't like to see him serve for 2 full years after a general election where he didn't have to run.

**DELEGATE McCARVEL:** Thank you.

**CHAIRMAN AASHEIM:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman, would Mr. Graybill yield to a question, or probably, you could answer it. I am not certain whether we're talking about line 15 on page 39 or line 15 on page 6. Or which one of these reports are we talking about when we're starting the amendment?

**CHAIRMAN AASHEIM:** On page 6, I believe, Mr. Habedank.

**DELEGATE HABEDANK:** Thank you. And would you please, then, read the amendment over slowly so we could get it.

**CHAIRMAN AASHEIM:** I will do that. "Amend Section 6, subsection 1, line 15 and 16 on page 6. After the word 'office' insert 'until the next succeeding general election, when a replacement shall be elected to serve the balance of the term'—'until the next succeeding general election, when a replacement shall be elected to serve the balance of the term'." Any further discussion?

Mr. Graybill.

**DELEGATE GRAYBILL:** Mr. Chairman. I'm going to withdraw my motion because I don't think it does what I want it to do. It does get the Lieutenant Governor situation cleared up, but it doesn't get the Governor situation cleared up. And somehow, language should be devised to do that. I'll think about it, and I'll withdraw my motion.

**CHAIRMAN AASHEIM:** Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman. I think it does solve the problem, because when the appointed Lieutenant Governor assumes the Governorship, then he, in turn, will have a right to reappoint a Lieutenant Governor. And in that instance, then, they probably should both run at the next general election. Wouldn't it follow that he would appoint a man to serve as Lieutenant Governor when he assumed the Governorship? And in this instance, they'd both run at the next general election.

**CHAIRMAN AASHEIM:** Any further discussion?

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. In view of the difficulty and in order to save time, I move we pass consideration of subsection 1, Section 6, until the afternoon session.

**CHAIRMAN AASHEIM:** The motion has been made, and I think the motion is in order, to pass consideration of subsection 1 of Section 6 until immediately after convening this afternoon. As many—any discussion? As many as are in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Opposed.

(No response)

**CHAIRMAN AASHEIM:** Motion is carried.

(Committee of the Whole Chairmanship assumed by Mr. Graybill)

**CHAIRMAN GRAYBILL:** Will the clerk read subsection 2 of Section 6?

**CLERK SMITH:** "Subsection 2 of Section 6. If the office of secretary of state or attorney general becomes vacant by death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office until the next general election and until his successor is elected and qualified. The person elected to fill such vacancy shall hold the office until the expiration of the term for which the person he succeeds was elected." Subsection 2 of Section 6, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. As a substitute motion, I move that when this committee does arise and report, after having under—that it adopt subsection 2 of the minority report.

**CHAIRMAN GRAYBILL:** What page is that, Mr. Joyce?

**DELEGATE JOYCE:** Page 39. The reason I do this is because they are identical in all respects except that the minority report has added the three officers that the majority report originally dropped. Therefore, I move consideration of—that subsection 2 of the minority report be adopted.

**CHAIRMAN GRAYBILL:** Very well. Mr. Joyce, do you care to discuss it?

**DELEGATE JOYCE:** Yes, Mr. Chairman. This section, in effect, continues exactly the same system provided in present Article V. If any of the offices become vacant in the first half of a 4-year term—that's the way it works—then the Governor appoints someone to serve until the next general election. At that time, the law provides that nominations are open to run for that office, and anybody who wishes to run for any of these offices may do so, and it simply retains the current constitutional provision.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman. Will Mr. Joyce yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Yeah.

**DELEGATE HABEDANK:** Did your committee give any consideration to requiring the Governor to appoint the successor of the deceased from the same political party as the deceased?

**DELEGATE JOYCE:** No, we did not.

**CHAIRMAN GRAYBILL:** Is there further discussion? Members of the committee, you have before you on the motion of Mr. Joyce—

Oh, Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman. Will Mr. Joyce yield to a question?

**DELEGATE JOYCE:** I will.

**DELEGATE LOENDORF:** Mr. Joyce, on line 26, after the word "person", shouldn't the following word be "appointed" rather than "elected"?

**DELEGATE JOYCE:** What page are you reading on Mr.—?

**DELEGATE LOENDORF:** Page 39.

**DELEGATE JOYCE:** All right, and line what?

**DELEGATE LOENDORF:** Line 26; the sentence there beginning "the person"—shouldn't that be "appointed" rather than "elected"?

**DELEGATE JOYCE:** No. What this has reference to is, assuming the Secretary of State dies in the first half of the term, the Governor appoints someone to serve till the next succeeding—next general election. That's at midterm. They have an election, somebody wins. We tried to make it perfectly clear that he doesn't get a 4-year term at that time. He just fills out the balance of the 2-year term, which is the present system.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you, on the motion of Mr. Joyce that when the committee does arise and report, after having under consideration Section 5—no, Section 6, subsection 2, that that report, as presented by the minority on page 39, be adopted.

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President. I would like to make an amendment to subsection 2, but I haven't time to write it that rapidly. I will tell you what it is.

**CHAIRMAN GRAYBILL:** Okay.

**DELEGATE HABEDANK:** On line 24, following the word "qualified person", I would like to insert these words: "from the same political party as the former occupant". In other words, the purpose of this amendment would be that if the Governor was a Democrat, Treasurer was a Republican, the Democrat would appoint a Republican successor, rather than a Democrat successor, or else the other way around.

**CHAIRMAN GRAYBILL:** Mr. Habedank's amendment is on line 24 on page 39 of 6, sub. 2, after the words "a qualified person" to add "a qualified person from the same political party as the former occupant to hold and serve in that office until the next general election."

Mr. Aasheim.

**DELEGATE AASHEIM:** In regards to Mr. Habedank's proposal there, if I were Governor and—there are many good Republicans, I'll have to grant you, Mr. Habedank. But, in this case, I wouldn't select a very good one, because I wouldn't want him reelected.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** I rise in opposition to the amendment, because the current Constitution provides this exact system, and it doesn't seem to me it has worked too badly. It prohibits the Governor from appointing some Independent, who isn't a political party. As I recall, in the discussion of the General Government Article, that—where Mr. Habedank pointed out to us that, in the future, we may not have any political parties. Maybe we'll all be true nonpartisans, and it seems to me that it just is—would be a game anyway. Say, the Democrat Governor—he'll find some Republican that is really a Democrat, or vice versa—and I don't see any sense in writing this into the Constitution.

**CHAIRMAN GRAYBILL:** The issue before us is Mr. Habedank's amendment to line 24 of subsection 2 of Section 6, to add the phrase "that the qualified person must be"—"the qualified person from the same political party as the former occupant to hold and serve until" and so forth. So many as shall be in favor of Mr. Habedank's amendment, please say Aye.

(No response)

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No. (Laughter)

**CHAIRMAN GRAYBILL:** That was two for it. All right, the issue is on Mr. Joyce's substitute amendment to use the language on page 39 from the minority report for subsection 2. Members of the committee, you now have before you Mr. Joyce's substitute motion that when this committee does arise and report, after having under consideration Section 6, subsection 2, that the minority report be adopted. So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.

(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it.

**DELEGATE JOYCE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move to delete Section 6, subparagraph 3, of the majority report as it appears on page 23 in lines 15 through 19.

**CHAIRMAN GRAYBILL:** Mr. Joyce's motion is now to delete Section 3 of the majority report. Mr. Joyce, I don't know that that motion is necessary. Unless you want to move the adoption of it, I don't think it's in there. Why don't you give notice that you're deleting it, and if anybody cares to put it back in, we'll vote on it.

**DELEGATE JOYCE:** All right. The reason for it, Mr. President, is this was put in there when the previous articles provided for the optional method of electing the superintendent. That has now been deleted and—so the Superintendent of Public Instruction will be covered under subsection 2 with all the other elected officers, and it's unnecessary, in my opinion, at any rate, to have paragraph 3 in, so—unless somebody wants to move it.

**CHAIRMAN GRAYBILL:** Very well. Seeing no one rising on that point, we'll move on to Section 7. Will the clerk please read Section 7 of the majority report on page 6— Section 7.

**CLERK SMITH:** "Section 7. All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive department of state government and their respective functions powers, and duties, except for the office of governor, lieutenant governor, secretary of state, attorney general and superintendent of public instruction, shall be allocated by law among and within not more than 20 departments. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections or units, in such manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a principal department." Section 7. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Section 7. Mr. Joyce.

**DELEGATE JOYCE:** I move to amend the proposed section to add "the treasurer and the auditor". May we have agreement, Mr. Chairman? I mean—I keep referring to page 24 because the comments follow thereafter, and the Chair, apparently, is using Section 6—page 6. Since they're both the same, which do you prefer?

**CHAIRMAN GRAYBILL:** Well, you go ahead and use 24; I'll follow it, too. I just lost page 7 in your proposal here, so I was panicked for a moment, but I've got another one now.

**DELEGATE JOYCE:** All right, Mr. Chairman. I move that Section 7, the Executive Committee Report—as it appears on page 24 of the Executive Committee proposal, be amended by inserting in line 7, after the word "instruction", the following words: "state auditor and state treasurer."

**CHAIRMAN GRAYBILL:** Very well. So many as shall be in favor of Mr. Joyce's motion to add "state auditor and state treasurer" into Section 7 on line 7 on page 24, please say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** So ordered.

**DELEGATE JOYCE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Do you want to read the section then as amended or—

**CHAIRMAN GRAYBILL:** Well, we've read it once.

**DELEGATE JOYCE:** All right.

**CHAIRMAN GRAYBILL:** I think we can work with it until we get a little further along.

**DELEGATE JOYCE:** All right. Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 7 of the Executive proposal, that it recommend that the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** This Section 7 is the identical—word for word, in both the minority and the majority reports, it's identical with the current constitutional provision. It is the amendment that the people recently added to the Constitution at the last general election, with the exception that the amendment gave a day certain when the Executive Reorganization must have been accomplished. We have deleted that, because if the Constitution passes, that date will have been passed also, and—so that we thought no sense carrying it forward for the future. It is the identical section. And our comments thereon are that the 1889 Constitution's inherent contradiction—the delegation of executive power to the Governor, it restricting the power ~~due~~ to a diffusion of constitutional boards, has been clarified by the adoption of the Executive Reorganization amendment and the proposed corollary changes in the Executive Article. Previously, the divided powers of boards of elected officers, such as the Board of Examiners, made a mockery of Section 5 of the present Constitution. That's the section that says that the Chief Executive power is—supreme executive power is vested in the Governor, who shall see that the laws are faithfully executed. The Governor, under reorganization and in this article, has the responsibility and the accountability to the electorate and the Legislature. This fundamental principle of delegation of power is an important breakthrough in the continuing effort for effective, responsible, viable and efficient government. The state's Chief Executive will be chief in fact, not in rhetoric. The majority of the committee deleted as constitutional—well, I'll strike that.

**CHAIRMAN GRAYBILL:** Mr. Roeder.

**DELEGATE ROEDER:** Mr. Chairman. I'd like to move an amendment of Section 7. I have the amendment up there. Could the clerk read it, please.

**CHAIRMAN GRAYBILL:** Yes—the clerk please read Mr. Roeder's amendment.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 7 of the majority report, page 7, following line 12, of the following: 'the governor may make'—"

**CHAIRMAN GRAYBILL:** Just a moment, Mr. Clerk. So that everybody understands, this means that you add it onto the end of the section. So it's nothing being stricken out or put in; it's just added onto the end. Okay, go ahead.

**CLERK SMITH:** "The governor may make changes in the organization of the executive branch or in the assignment of functions among its units, which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. Such orders shall be submitted to the legislature, which shall have 60 days of a regular session, or a full session of shorter duration, to express its disapproval. Unless modified or disapproved by resolution concurred in by a majority of the members of both houses, the orders shall become effective at a date thereafter to be designated by the governor. Signed: Roeder."

**DELEGATE ROEDER:** Mr. Chairman. May—

**CHAIRMAN GRAYBILL:** Mr. Roeder.

**DELEGATE ROEDER:** I address a few very brief remarks to my proposed amendment?

**CHAIRMAN GRAYBILL:** Yes, sir.

**DELEGATE ROEDER:** This is taken from my Proposal 77, and this particular portion of the proposal I did not push in committee because we were very hard-pressed for time and, also, I have reservations about it because I feel that it probably is statutory in nature and I'm not sure it belongs in the Constitution. Only one state, Alaska, I think, has such a provision in its Constitution. And since I'm supporting it, I feel safe in rising that you will not pass it because I'm supporting it. But I bring it up for two reasons. I think the idea needs attention because it is a very necessary concomitant of the kind of Executive Reorganization that we have passed in our Legislature. I wasn't going to bring it up, but 2 weeks ago when the delegates of District 11 were down in Bozeman attending a town meeting—when we delegates of District 11 were playing, indeed, a role of peoples' advocate—this was brought to my attention by a gentleman there who was a public employee of the State of Montana, and he thinks some assignments of Executive functions were badly misplaced in the legislation, and he urged that I call this idea to your attention. Now, I realize that the idea will seem novel and radical. Well, it's not really new. The President of the United States has had such Executive Reorganization powers for a long time, and as to the radicalness of the idea, I will submit this: the idea is not original with me; I stole it from Herbert Hoover.

**CHAIRMAN GRAYBILL:** Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. President. I move that we pass Section 7 and that this amendment be placed on our desks before we give it any further consideration.

**CHAIRMAN GRAYBILL:** Is this amendment not on anyone's desk? Very well. The motion of Mrs. Babcock is that we pass Section 7 until this has been placed on our desks.

Mr. Siderius.

**DELEGATE SIDERIUS:** Mr. President. Will Mr. Joyce yield to a question?

**CHAIRMAN GRAYBILL:** Is this a question on Mrs. Babcock's amendment—proposed motion to pass? Mrs. Babcock has made a motion to pass consideration of Section 7 until Mr. Roeder's amendment has been placed before us.

**DELEGATE SIDERIUS:** I don't know whether it would or not, right direct to it, but I would just like to ask, just for information, how many departments has the state got now?

**DELEGATE JOYCE:** As I understand, it's—

**DELEGATE SIDERIUS:** Under this—

**DELEGATE JOYCE:** —20 is the maximum. I think around 17 have been implemented or—and then the constitutional officers are on top of that. Although—some of the constitutional officers are in the 17 and some are not, like the Superintendent of Public Instruction is not within the Executive Reorganization, as I understand it.

**DELEGATE SIDERIUS:** Well, there's rumors that there's already 20—our—we're advocating a new Department of Agriculture. Now, would this eliminate that?

**CHAIRMAN GRAYBILL:** Mr. Siderius, I'm going to rule that out of order. I think we've got to get the sense of the body on whether we're going to debate this after we get it on or whether we're going to debate it now. So the issue is now on Mrs. Babcock's motion to pass Section 7 until Mr. Roeder's proposal has been placed before you. All in favor, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Will the clerk please read Section 8, sub. 1. Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. Due to the hour, I move we recess until 1 o'clock this day.

**CHAIRMAN GRAYBILL:** Well, Mr. Eskildsen, I'm glad you called my attention to the clock. A motion has been made to recess until 1 o'clock. All in favor, say Aye

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** So ordered. Mr. Rygg.

**DELEGATE RYGG:** I'd like to announce a meeting of Revenue and Finance Committee at 12:15 in Room 215 of the Mitchell Building.

**CHAIRMAN GRAYBILL:** Revenue and Finance at 12:15 in the Mitchell Building.

(Convention recessed at 11:50 a.m.—reconvened at 1:08 p.m.)

**CHAIRMAN GRAYBILL:** The Committee will be in order. Please close the rear doors. Ladies and gentlemen, when the committee adjourned before lunch, we were to bring up 6, subsection 1, on which I had an amendment after lunch. That will be done as soon as it's up from printing. But, in the meantime, we also passed 7 on Mr. Roeder's amendment, so that it could be placed upon your desks. It's my understanding that everyone now has on their desks a copy of Mr. Roeder's addition to Section 7 of the Executive Article. Mr. Roeder's amendment has the effect of adding the language shown on his amendment at the end of Section 7. Is there further discussion? Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, regretfully I assure you, I rise to oppose the amendment, because I feel I should tell to the assembly the thinking of the committee. When Mr. Roeder proposed that this section be incorporated in Section 7 in his Proposal Number 77, the committee rejected it on the ground and for the reason that it was properly a statutory matter. In effect, what it does is it lets the Governor reorganize and then submit his proposed plan to the Legislature, and it becomes law in 60 days if the Legislature doesn't act on it, but if it does act on it, then it does not become law. And we felt that if the Legislature doesn't approve of it, of course, they will change it. So that there wouldn't be any difference between the Governor submitting his proposed reorganization to the Legislature and letting them approve it. The only thing it might do is that it speeds matters up if they don't even bother to consider it for 60 days. But—they could also provide, by statute, that this would be the situation, and so we disapproved it in the committee, on the ground that it was statutory.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President. I rise in opposition to Mr. Roeder's proposal on the same grounds that Mr. Joyce just spoke on. I do this kind of regretfully; we got along real good in the committee, and I have a great deal of respect for Mr. Roeder. However, the whole Reorganizational Act is a statutory law that was passed by the Legislature, and I feel that to further infringe on the Legislature by enacting something that is statutory and putting it into the Constitution is contrary to good government.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** I would like to reflect a different point of view in the fact that I don't believe this is just statutory. I think if you look at the article quite carefully, you'll find that it's a rather challenging definition of Executive power. Can the Governor run his own house, or can't he? If he has to wait for every order upon the Legislature, then, of course he, in fact, is cut down in size rather dramatically. It seems to me that you have the safeguard of the Legislature approving an action once they're in session, once they see what the Executive orders are; but I think that it's a freeing of the Governor to really do the job that a

Governor should be doing, running his own house.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, will Mr. Roeder yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Roeder?

**DELEGATE ROEDER:** Mr. Chairman, I yield.

**DELEGATE BLAYLOCK:** Mr. Roeder, according to the first two sentences—or three sentences—it says the Governor may make changes in the organization of the Executive branch or in the assignment of functions among its units, which he considers necessary for efficient administration. As far as you could see, would this allow the Governor to go into all branches of the Executive Department, including, say, the State Auditor's office or the State Superintendent of Public Instruction's office or any of these offices and say, "You will hire these personnel from this list?" Would he have that power?

**DELEGATE ROEDER:** Well, Mr. Blaylock, that was not my intention, and I think you've raised an important point, that—No, my intention was—let's use this example, Chet. The Department of Agriculture, now, is a very big organization, and it's got lots of divisions in it. I can't even think of a specific example, but let's say you have a chicken and egg problem, which has been put in division A, and it turns out that it doesn't work well that way, that the chicken and egg problem should be over in division B; it was my intention that the Governor, under this, has authority to move it from one division to another. It was not my intention to give him the power to move it, say, from Agriculture to Highways, or it certainly wasn't my intention to give the Governor power over anybody but the department heads.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** In answer to Mr. Blaylock's question, if I might take a stab at it. The present Reorganization Act is identical with the proposed Section 7, and it excludes all these elective officers from the Governor's control. So the Governor, now, cannot interfere in the operation of any of the elected officers under the present Constitution, and, hopefully, the new Constitution, if it contains this same Section 7, it will be exactly the same way. If you will read it, it says—in the first part of Section 7, it says, in effect, that the government can be reorganized into 20 departments, except for the offices of Governor, Lieutenant Governor, Secretary of State, Attorney General, Superintendent of Public Instruction, State Auditor and State Treasurer. So they're excepted out of the Reorganization Act.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman, would Mr. Joyce yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Yes, I will.

**DELEGATE HABEDANK:** As I interpret Section 7, which is a continuation of the present amendment to the Constitution, these powers are allocated among 20 departments by law. The next Governor doesn't like the way it's allocated; is he under your present Section 7, without the addition of Mr. Roeder's amendment, able to make a reallocation without first having the Legislature pass a law authorizing him to do so?

**DELEGATE JOYCE:** It's my understanding that he is not. He must go to the Legislature.

**DELEGATE HABEDANK:** In other words, unless the—Mr. Chairman, may I ask another question?

**CHAIRMAN GRAYBILL:** Yes, sir.

**DELEGATE HABEDANK:** Mr. Joyce, with Mr. Roeder's amendment, if we adopted it then, the future Governors could do as the President of the United States now does. He could change the division and, if the Legislature did not act to stop him, it would become effective. So it puts the burden on the Legislature to stop him, rather than the burden on the Legislature to make the change in the first place, is that correct?

**DELEGATE JOYCE:** That's my understanding that—of the intent of—of the purpose of Mr. Roeder's amendment, yes.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President, this is striking—we've just reversed the team around here. This is what I've never liked about the Federal Reorganization Act. You put the veto power in the Legislature, instead of the initiative power in the Legislature. You gave the initiative power—the right to introduce—the right to propose is taken away from the Legislature and is given to the Governor. Now, this is a lot of difference. If this last reorganization thing—the Governor then—they come up in the House and Senate made a lot of changes in which was originally started. Now, if we have it coming from the top down, or the bottom up, this is the change in the rule. And there's nobody I hate to get up against more than Mr. Roeder. There's no person I respect more in this body than I do him. He is doing a beautiful job of this, but I think this concept of letting the Governor—there's no compromises, they can either take or leave. Now, under the other proposition, the Governor has to take or leave, except we do let him veto some item or appropriations. And I object—in my mind—to changing the order of the style of government. This is what bothers with this. I don't like the federal either, so it isn't just for this.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman. I submit that in strengthening the office of the Executive, that if it was necessary to use the Executive to do this now, which it is—which was necessary, that future Executives should have the power to delineate the powers, duties and functions of the various departments, and I submit that the Legislature, in having the veto power, have sufficient control to protect the people. The place where Executive administration occurs should be in the office of the Governor. He is best informed, he knows how things are working, and he is the best place to vest the power to make these changes. I agree that the Legislature should have the power of veto, and this is contained in Mr. Roeder's amendment. I support Mr. Roeder's amendment.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman. As everybody in this Convention knows, I want a strong, very powerful Legislature. However, I do feel that the Governor should be master in his own household. And this method—at the "Little Hoover Commission" has worked very well for the federal government, and I'm sure it would work very well for the State of Montana.

**CHAIRMAN GRAYBILL:** The issue is on Mr. Roeder's amendment, which would add to Section 7 of the Executive Article the following language: "The governor may make changes in the organization of the executive branch or in the assignment of the functions among its units, which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. Such orders shall be submitted to the legislature, which shall have 60 days of regular session, or a full session of a shorter duration, to express its disapproval. Unless modified or disapproved by resolution concurred in by the majority of the members of the legislature, the orders shall become effective at a date thereafter to be designated by the governor."

Mr. Arbanas.

**DELEGATE ARBANAS:** I'd like to call for a roll call vote, please.

**CHAIRMAN GRAYBILL:** Very well. Roll call vote. So many as shall be in favor of Mr. Roeder's proposed amendment, say Aye; and so many as shall be opposed, say No—vote Aye and No on the voting machines.

Have all the delegates voted? Does any delegate wish to change his vote? Please record the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Absent |
| Bates | Aye |
| Belcher | Nay |
| Berg | Absent |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Absent |
| Cate | Nay |
| Champoux | Aye |
| Choate | Nay |
| Conover | Aye |
| Cross | Aye |

| | |
|---|---|
| Dahood | Aye |
| Davis | Aye |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Nay |
| Graybill-Chairman | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Absent |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Absent |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Absent |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Absent |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Absent |
| Schultz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Absent |
| Ward | Nay |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 43 delegates voting Aye, 44 voting No.

**CHAIRMAN GRAYBILL:** 44 delegates having voted No, Mr. Roeder's amendment fails. The issue is now on Section 7 of the Executive Article. Is there any further discussion? Members of the committee, you now have before you, on the motion of Mr. Joyce that when this committee does arise and report, after having had under consideration Section 7 of the Executive Article, it recommend that the same be adopted. So many as are in favor of that motion, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it. May the Chair inquire if what's being put on the desk is the amendment to Section 6? It is. Very well. If that's the case, Mr. Aasheim, would you take the Chair.

(Committee of the Whole Chairmanship assumed by Mr. Aasheim)

**CHAIRMAN AASHEIM:** Members of the Assembly, we're now on Section 6, subsection 1. The clerk will read subsection 1.

**CLERK HANSON:** "Section 6, subsection 1. If the office of lieutenant governor becomes vacant by his succession to the office of governor or by his death, resignation or disability as determined by law, the governor shall appoint a qualified person to hold and serve in that office for the remainder of his term." Mr. Chairman, subsection 1.

**CHAIRMAN AASHEIM:** Mr. Graybill. Will you move the adoption?

**DELEGATE GRAYBILL:** Oh, no—Mr. Joyce, you want to move the adoption?

**DELEGATE JOYCE:** Yes. Mr. Chairman, I move that when this committee arise and report, after having had under consideration Section 6 of the Executive Article, subsection 1, that the same be adopted.

**DELEGATE GRAYBILL:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Graybill.

**DELEGATE GRAYBILL:** I would like to move to amend Section 6, subparagraph 1. The amendment appears on line 15, page 6, if you read the original report, and on line 5, page 23, after the word "and", and the amendment would read as follows: "The governor shall appoint a qualified person to hold and to serve in that office for the remainder of the term, provided further, however, that no person thus appointed may succeed to the office of governor. If both the elected governor or the elected lieutenant governor shall become unable to serve in the office of governor, succession to their respective offices shall be as provided by law for the period until the next general election, when both the governor and the lieutenant governor shall be elected again for any balance of the original term remaining."

Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Graybill.

**DELEGATE GRAYBILL:** I think that—I've checked this with Mr. Garlington, Mr. Joyce, and with Mr. Mahoney. We think this may solve the problem of allowing an elected—or allowing an appointed Lieutenant Governor to become Governor of the state. The elected Lieutenant Governor may succeed, then he may appoint another Lieutenant Governor who could take over the functions of Lieutenant Governor; but in the event the new Governor died or resigns, this man could not take the office, because he wasn't elected. At that point, the Legislature can decide how to handle that; that is, whether to have it the Speaker of the House or somebody from the Senate, or some other way; but in any event, at the first general election, both the Governor and the Lieutenant Governor would again have to run and give the people a chance. But they would run for only the balance of any term remaining. Now, if the vacancy occurred in the second half of the Governor's term, there would be no problem.

**CHAIRMAN AASHEIM:** Just a moment, please. For what purpose does Mr. Habedank rise?

**DELEGATE HABEDANK:** I wish to ask Mr. Graybill a question.

**CHAIRMAN AASHEIM:** Mr. Graybill, will you yield?

**DELEGATE GRAYBILL:** I'll yield after this next sentence. If it happens in the first half of the Governor's term, then this procedure here would apply.

Mr. Habedank, I yield.

**DELEGATE HABEDANK:** Mr. Graybill, is it your intention that, if the person appointed to Governor is appointed, he could not run to succeed—

**CHAIRMAN AASHEIM:** Mr. Habedank, are you questioning the discussion, or what's the purpose for your rising?

**DELEGATE HABEDANK:** I'm questioning the meaning and intent of the amendment.

**CHAIRMAN AASHEIM:** Well, will you let him finish?

**DELEGATE HABEDANK:** I thought he finished.

**DELEGATE GRAYBILL:** I've finished.

**CHAIRMAN AASHEIM:** All right.

**DELEGATE HABEDANK:** As I read this, that no person thus appointed may succeed to the office of Governor, it would mean that whoever is appointed could not be elected Governor without going out of that office. Is that your intention?

**DELEGATE GRAYBILL:** My intention is that no person thus appointed may succeed to the office of Governor by the—Yes, he may not succeed to the office of Governor unless he runs for it. I'm not stopping him from running, but I think the word "succeed" means move into the office automatically when the Governor leaves.

**DELEGATE HABEDANK:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Graybill, I would agree with you, if Style and Drafting agrees, that at the end of the term of his appointment, he could then be a candidate which the people could elect or not. But, if it's to be interpreted that he cannot be a candidate to succeed himself in that office, then I would question the wording.

**CHAIRMAN AASHEIM:** Mr. Graybill, will you clarify the question? Will you indicate where your amendment begins on page 6?

**DELEGATE GRAYBILL:** Yes, sir, Mr. Chairman. On page 6, it begins on line 15 on page 6, after the word "and"—so that the sentence reads, "a person to hold and to serve in that office."

**CHAIRMAN AASHEIM:** Line 15?

**DELEGATE GRAYBILL:** Right.

**CHAIRMAN AASHEIM:** Thank you.

**DELEGATE GRAYBILL:** And on page 23, it's on line 5.

**CHAIRMAN AASHEIM:** Any further discussion?

Mr. Holland.

**DELEGATE HOLLAND:** Will Mr. Graybill yield to a question?

**CHAIRMAN AASHEIM:** Will you yield?

**DELEGATE GRAYBILL:** (Inaudible)

**DELEGATE HOLLAND:** Leaving out the first portion of the sentence there, from "to" down to "governor", would give you practically the same effect without having the worry, wouldn't it?

**DELEGATE GRAYBILL:** Would you say that again, Mr.—

**DELEGATE HOLLAND:** Well, if you were to eliminate that portion of the sentence that is incomplete—what would constitute the first sentence if the whole sentence were there—if that were left out, wouldn't this give you the same effect and not have the question that Mr. Habedank has raised? I'm thinking particularly, Mr. Graybill, if the Legislature were to decide that they wanted to—the appointed Lieutenant Governor to succeed.

**DELEGATE GRAYBILL:** As near as I can see, Mr. Holland, you're correct; we could leave out that half sentence and start with the words "If both the elected governor or the elected lieutenant governor should then become unable to serve in the office of governor, succession of their respective offices should be as provided by law for the period until the next general election, when both the governor and the lieutenant governor shall again be elected for any balance of the original term." I think that that gives you the same effect.

**CHAIRMAN AASHEIM:** Do you want to amend that, Mr. Graybill?

**DELEGATE GRAYBILL:** I would ask leave to amend my motion by striking the half sentence at the beginning of it, and starting with the word "If both the governor".

**CHAIRMAN AASHEIM:** You would strike, then, the material from beginning "to serve" and strike the two and a half lines—

**DELEGATE GRAYBILL:** Right

**CHAIRMAN AASHEIM:** —unto "governor".

**DELEGATE GRAYBILL:** Yes, sir.

**CHAIRMAN AASHEIM:** Strike, if there are no objections, this material: "to serve in that office for the remainder of the term, provided further, however, that no person thus appointed may succeed to the office of governor." Without objection, that will be stricken.

Mr. Graybill.

**DELEGATE GRAYBILL:** It should now be apparent that what remains of it is tacked on the end, and we got to leave the rest of the part in that was there before. I think that's what Mr. Holland meant.

**CHAIRMAN AASHEIM:** Mr. Garlington.

**DELEGATE GARLINGTON:** Well, it was our thought in the first instance that if the team effect were to be continued, the appointed Lieutenant Governor should serve in the position of Lieutenant Governor for the entire remainder of the term. I'm not clear whether the present amendment deletes that concept or not. Perhaps Mr. Graybill would yield to a question to explain.

**CHAIRMAN AASHEIM:** Will you yield, Mr. Graybill?

**DELEGATE GRAYBILL:** Yes, I yield. It would seem to me, Mr. Garlington, that the way we now have it fixed it would not, that they again would run as a team. At the minute that anybody other than an elected Lieutenant Governor became Governor, the Legislature would have to provide, you see, what would happen in the meantime. This still leaves to the Legislature the job of saying where the succession goes in the event both the elected Governor and Lieutenant Governor are gone. But at that point, if it's in the first 2 years, you've got to have another election, at which time both of them run. All we're doing is telling the Legislature that, at least at the next general election, we've got to have a team run again. So, I think we've actually preserved the team concept for another half term here.

**CHAIRMAN AASHEIM:** Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, would Mr. Graybill yield to a question, please?

**DELEGATE GRAYBILL:** Yes.

**CHAIRMAN AASHEIM:** (Inaudible) yield?

**DELEGATE BOWMAN:** Mr. Graybill, is it your intention that another team could not file and oppose the team in office in this midelection—term election?

**DELEGATE GRAYBILL:** No. There would be no team in office at the midterm election. The term would end there. The Legislature must let it end there. The point is to have an entire new election at the election, so that one—for one term, the term would be 2 years instead of 4 years till we were back on the cycle.

**DELEGATE BOWMAN:** Mr. Chairman, could I ask Mr. Graybill another question?

**CHAIRMAN AASHEIM:** Will you yield to another question, Mr. Graybill?

**DELEGATE GRAYBILL:** Yes.

**DELEGATE BOWMAN:** If that's the case, then shouldn't the word "elected" in the last line be changed to "candidate"—"shall then be candidates for any balance of the original term remaining"?

**DELEGATE GRAYBILL:** Well, I'm talking about the office, and you're talking about the men. I'm saying that the office must be again elected to, and you're talking about the two people that happen to be there. I don't think that's misleading, but perhaps it is.

**CHAIRMAN AASHEIM:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman, will Mr. Graybill yield to another question?

**CHAIRMAN AASHEIM:** Will you yield?

**DELEGATE GRAYBILL:** Yes.

**DELEGATE HABEDANK:** Mr. Graybill, looking at your page 6, line 15, or the top line of your proposed amendment, as I read it, it would read, "to serve in that office for the remainder of the term". And then, you struck out "provided, however, that no person thus appointed may succeed to the office of governor." Is that correct?

**DELEGATE GRAYBILL:** Yes, sir—or we left it in the original language, either way you look at it.

**DELEGATE HABEDANK:** All right. Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Graybill, the point I was trying to reach, and I apparently didn't—if it would read, "to serve in that office until the next general election", he would have to come up for election at the 2-year period, and as I read your amendment, he could die in his first year of office and then he would be appointed and he would serve out 4 years—the remainder of the 4 years. Was that your intention?

**DELEGATE GRAYBILL:** I think the language is all right the way it is. I see—I think you're struggling with the problem I was struggling with this morning, and that is, you see—the original Lieutenant Governor is elected, so he can become the Governor. We have no problem there. It's when this original Lieutenant Governor vacates the office that we have a problem. And so, the language is right here that if the office of Lieutenant Governor becomes vacant, then, you see, the Governor may appoint a qualified person to hold the office of Lieutenant Governor for the remainder of—I suppose your point is that if it was in the first 2 years, we've got a fellow holding it for 2—No, but the problem doesn't arise till the death of the man that is then in. So I think the language is right.

**DELEGATE HABEDANK:** Right. Thank you.

**CHAIRMAN AASHEIM:** Any further discussion on the amendment?
Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, would Mr. Graybill yield to one more question?

**CHAIRMAN AASHEIM:** Will you yield, Mr. Graybill?

**DELEGATE GRAYBILL:** (Inaudible).

**DELEGATE McNEIL:** Mr. Graybill, I'm not certain that I understood your answer to Mr. McCarvel's question this morning, that if this situation arises in the first 2 years and we now have an appointive Lieutenant Governor who accedes to the Governorship, and then he must, at the next general election, run for election. He doesn't have to run for election.

**DELEGATE GRAYBILL:** No, if—let's take it through again, Mr. McNeil. If the Governor dies or resigns and the elected Lieutenant Governor becomes Governor—

**DELEGATE McNEIL:** Uh huh.

**DELEGATE GRAYBILL:** —he can appoint a Lieutenant Governor and everything sails along perfectly for 3 years. He can serve the full term; he's elected. All this does is say that if both the elected Governor and the elected Lieutenant Governor becomes unable to serve, then you've got to have an election at the next coming-up general election.

**DELEGATE McNEIL:** Now, Mr. Chairman, at that point comes my question. Against whom does this appointive man run? Is it just on his own parties for a new pair for the balance of the 2 years, or is it an open election in which there will be both parties—or as many parties as want to—to seek election for the balance of the 2 years?

**DELEGATE GRAYBILL:** Mr. Chairman. It's an open election, anybody can run then. The man who's the appointed man or anybody that's in—you see, we don't know for sure who's going to be in, because if the double death or the double resignation occurs in the first 2 years, we're leaving it to the Legislature whether they are going to designate the Speaker of the House or the Speaker of the Senate or some other constitutional officer to succeed. We're not trying to tell them how to do that. We're trying to say they can't—they really get to fix up the succession is what it amounts to, which is what Mr. Mahoney wants to do. And they get to fix up that succession but not past the next general election, at which time it's a brand-new election with teams on both sides, even independent teams, but this new election would be for a short 2-year term to get everything back on cycle again, because there may be some good reason to leave it on cycle.

**CHAIRMAN AASHEIM:** Any more discussion? If not, are you ready for the question? The question then arises on the motion by Mr. Graybill to amend subsection 1, Section 6—to amend by adding after—now, is this correct, Mr. Graybill?—after the word "term", in line 6, page 23, the following words: "If both the elected governor or the elected lieutenant governor should become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election, when both the governor and lieutenant governor shall be again elected for any balance of the original term remaining." As many as are in favor of the motion will say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Opposed?
(No response)

**CHAIRMAN AASHEIM:** The motion is carried.
Mr. Graybill will be back in the Chair.

(Committee of the Whole Chairmanship assumed by Mr. Graybill.)

**CHAIRMAN GRAYBILL:** Well, we've handled 6, sub. 1, and we've handled 7. I believe it's time for the clerk to read Section 8. Oh, I understand we have to adopt Mr. Joyce's original motion on 6, sub. 1. Mr. Joyce, would you like to move on 6, sub. 1, as amended?

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee does rise and report, after having had under consideration Section 6 of the Executive Article, that the same be approved and adopted as amended.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, will Mr. Joyce yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Mr. Chairman, I yield.

**DELEGATE BLAYLOCK:** Mr. Joyce, it's just a point of interest for me—When your committee was discussing this—now when the Governor and the Lieutenant Governor run as a team, both those men are voted upon by all the people.

**DELEGATE JOYCE:** Yes, sir.

**DELEGATE BLAYLOCK:** Okay. Now, if the Lieutenant Governor dies or resigns or anything like that, then the Governor has the power to elect a new one, is that right?

**DELEGATE JOYCE:** To appoint a new one, yes.

**DELEGATE BLAYLOCK:** To appoint a new one. Why was it, in your committee, that you decided you didn't want the confirmation of the Senate, because in this case, it is just purely the Governor; the people don't have even any judgment on it at all.

**DELEGATE JOYCE:** Well, I suppose because, right now, in the current Constitution, if the Secretary of State or one of those people dies, the Senate doesn't have any right to confirm them. He just fills the appointment till the next general election, and so we thought that it was unnecessary to require that in the case of this new Lieutenant Governor and it might not be desirable to bring the Legislature back into special session for that reason. Presumably, the Governor picked this teammate when he started out to run to begin with, and so the people—having elected the Governor, the people would have confidence in the Governor, and they should therefore have confidence in his election—appointment as the Lieutenant Governor as his new teammate.

**CHAIRMAN GRAYBILL:** Very well. The motion is on Mr. Joyce's motion that, when this committee does arise and report, that it suggests that Section 6, sub. 1, be adopted. So many as are in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** So ordered. Now, Mr. Clerk, would you read 8, sub. 1.

**CLERK HANSON:** "Section 8, Appointing power, subsection 1. The principal departments provided for in Section 7 shall be under the supervision of the governor and, except as otherwise provided herein or by law, shall be headed by a single executive appointed by the governor and subject to confirmation by the legislature. Such executive shall hold office until the end of the term of the governor, unless sooner removed by the governor." Mr. Chairman, subsection 1, Section 8.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** I move that when this committee does arise and report, after having had under consideration Section 8, subsection 1—please insert the 1—of the Executive Article, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. To explain this section, the fundamental concept of checks and balances by the separate branches of government is the key part of Section 8. The Governor has been delegated supervisory powers in this article in accord to his constitutional designation of executive power in the reorganization amendment and the statutes that are already approved. This section is keeping with the legislative implementation, dating back to the 1920's, of such a program. However, the Legislature had to reverse the trend whereby executive power had been whittled away to insignificance by creation of more than 160 state agencies with little executive or legislative supervision. Now, in this article, the Governor has been delegated the power as well as the right to appoint and remove the heads of the principal departments. However, the Legislature has been given the power to confirm such appointments, with the added safeguard to protect against reappointment of rejected nomiees. In effect, what Section 1 does is say that the principal heads of these departments—of course, that's where they're not elected—shall be of single executives appointed by the Governor unless otherwise provided by law. The Legislature, of course, can put a board a head of any of these departments or the Legislature can provide for an elected official to be a head of any of these boards, but if they don't do that, then they'll be a single executive. A single executive will have to be confirmed by the Senate. We mean the Senate, if it's bicameral; if it's unicameral, the Legislature. And if the Senate or the Legislature confirms this man, then he takes the office as the head of this department and he serves at the pleasure of the Governor and his term must end when the Governor's term ends. On the other hand, if the Senate or the Legislature refuses to confirm this man, then the Governor must find a new man. He can't—I guess this section doesn't do that. But I'll continue with the sentence even though it isn't applicable, being I had the thought going, and if anybody is following me—that when the Governor sends an appointment up to the Senate and the Senate rejects him, then the Governor must find a new appointee and keep doing that until he gets one through the Senate. And he cannot wait until the Legislature goes home and put that man back in. Once the man is rejected by the Senate, then he is ineligible to hold the appointment until the next session of the Legislature, at which time, of course, he could be then again submitted. If I've made that perfectly clear, we're back on Section 1, and I move the adoption of Section 1 again.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, would the gentleman, Mr. Joyce, yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Mr. Chairman, I yield.

**DELEGATE SCHILTZ:** Mr. Joyce, as I understand this, if it's a bicameral Legislature, requires the confirmation of both houses of the Legislature?

**DELEGATE JOYCE:** No. What we intended in the Executive Committee, and we didn't know whether we were going to have unicameral or bicameral or how it was going to be handled in the Convention—the idea was that, if it's bicameral, that it would be the Senate, the traditional way of doing it. We thought that Style and Drafting would eventually put that idea together when these decisions are, in fact, made in the Convention.

**DELEGATE SCHILTZ:** Another question.

**DELEGATE JOYCE:** I will.

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Mr. Chairman, I yield.

**DELEGATE SCHILTZ:** I think we're going to call the unicameral body the Senate; couldn't we just say the Senate, and that would cover both situations?

**DELEGATE JOYCE:** (Inaudible) fine with me, if that's what we're going to do. Mr. Chairman, I therefore ask leave to strike "legislature" and say "senate."

**CHAIRMAN GRAYBILL:** Is that on line 14?

**DELEGATE JOYCE:** Line 14—

**CHAIRMAN GRAYBILL:** On page 25?

**DELEGATE JOYCE:** —on page 25.

**CHAIRMAN GRAYBILL:** All those in favor of changing the word "legislature" to "senate", on page 25, line 14, and the comparable place in the other copies, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** So ordered.

**DELEGATE JOYCE:** Mr. Chairman, then I therefore move that when this committee does arise and report, after having had under consideration Section 6 of—

**CHAIRMAN GRAYBILL:** —8.

**DELEGATE JOYCE:** Section 8, subsection 1 of the Executive Article, as amended, that the same be recommended for adoption.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mr. Joyce's motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** So ordered. Will the clerk please read sub. 2.

**CLERK HANSON:** "Subsection 2. The governor shall appoint, subject to confirmation by the legislature, all officers provided for by this Constitution or by law and whose appointment or election or term is not otherwise provided for. They shall hold office until the end of the term of the governor unless sooner removed by the governor." Mr. Chairman, subsection 2.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. Could the clerk reread that to say "senate", rather than "legislature", and presume that he just misread it the first time?

**CHAIRMAN GRAYBILL:** Yes, we'll amend it on line 18 to say "senate" instead of "legislature". Mr. Eskildsen likes me to make a record on that. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 8, subsection 2, as amended, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I think I've already explained this section. This says, in effect, that the Governor shall make the appointment of the heads of the departments, subject to confirmation by the Senate—that is, if their appointment or election or their term is not otherwise provided for by law. So the Legislature, of course, could still create an office or a board, make it elective, and could give it a definite term. And if they do do that, well then, that man has the office for that term. And anyone so appointed shall hold office until the end of the term of the Governor unless sooner removed by the Governor. So the idea is that the Governor can remove the man unless the Legislature bars him from removing the man. In effect, it's the way that it's being done now, as I understand it.

**CHAIRMAN GRAYBILL:** Is there other discussion? Very well. You've heard the motion of Mr. Joyce that when this committee does arise and report on Section 8, subsection 2, that the same shall be reported as adopted. All those in favor, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** —clerk read, at this time, Section 3 as though "the legislature" said "senate" in line 24?

**CHAIRMAN GRAYBILL:** Well, I was just going to ask Mr. Schiltz to take the phone and tell me whether to change it in the rest of the paragraph. Do you want it "senate" or "legislature" in 3?

**DELEGATE SCHILTZ:** I haven't had a chance to look at it yet.

**CHAIRMAN GRAYBILL:** You've got to read ahead there.

**DELEGATE SCHILTZ:** I was busy trying to find out if you wanted to talk to me on the phone. (Laughter)

**DELEGATE JOYCE:** Mr. Chairman, I'll withdraw it. Let him read it as is.

**CHAIRMAN GRAYBILL:** Very well. Read the subsection 3 as is.

**CLERK HANSON:** "Subsection 3. If vacancy in any such office occurs during a recess of the legislature, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the legislature, when the office shall be filled by appointment and confirmation." Mr. Chairman, subsection 3.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 8, subsection 3, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Schiltz, do you have an opinion?

**DELEGATE SCHILTZ:** Yes. I don't have any problem with Legislature in that case.

**CHAIRMAN GRAYBILL:** Very well. Is there other dicussion of subsection 3?

**DELEGATE JOYCE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** What this section says is, if a vacancy occurs while the Legislature is in recess, then the Governor appoints a new person to discharge the duties until the next meeting of the Legislature—since we've freed the Legislature that they may come back at any time; once they come back, the Governor must send this appointment up for confirmation and go through the same procedure again.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mr. Joyce's motion that subsection 3 be adopted, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** It's approved. Will the clerk read subsection 4?

**CLERK HANSON:** "Subsection 4. No person not confirmed by the legislature for an office shall, except at its request, be nominated again for that office at the same session or be appointed to that office during a recess of the legislature." Mr. Chairman, subsection 4.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8, subsection 4, of the Executive Article, that it recommend that the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move that, in line 28 of page 25, the word "legislature" be stricken and the word "senate" added.

**CHAIRMAN GRAYBILL:** So, that's the first time the word "legislature" appears in that subparagraph 4, and you're changing that to "senate."

**DELEGATE JOYCE:** Uh huh—Yes, sir.

**CHAIRMAN GRAYBILL:** All in favor of that amendment—changing "legislature" to "senate" in subsection 4, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No (No response)

**CHAIRMAN GRAYBILL:** So ordered.

**DELEGATE JOYCE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Subsection 4 does what I previously said was being done. If a person is not confirmed by the Senate, he shall not again be nominated at that time—and his name cannot be submitted at that same session of the Legislature unless the Legislature itself requests it. What we had in mind there is they may refuse to confirm some man and then they may get second thoughts about it and send down to the Governor that, well, we request that you submit his name again, in which case he could be resubmitted. But if the Legislature, once having rejected him, does not request that his name be put up, then he cannot serve until there is a new session of the Legislature.

**CHAIRMAN GRAYBILL:** Very well. You've heard the motion of Mr. Joyce that, when this committee does arise and report, that subsection 4 of Section 8 shall be adopted. All in favor of the motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** So ordered Will the clerk please read Section 9.

**CLERK HANSON:** "Section 9. Budget and Messages. The governor shall at the beginning of each legislative session and may at other times give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature, at a time fixed by law, a budget for the ensuing fiscal period, setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state." Mr. Chairman, Section 9.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I

move that when this committee does arise and report, after having had under consideration Section 9 of the Executive Article, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. In this section, we've adopted the proposal of the Constitutional Revision Subcommittee, which they made in 1969, and it's in accordance with the prior recommendation of the Legislative Council. That is, prior to 1969, the Legislative Council recommended this. The present statutory responsibility of the Governor to submit an executive budget to the Legislature is made mandatory by this section of the Constitution. The present Constitution does require the Governor to send a message showing the needs of the state and the means of collecting revenue. And so this, in effect, adopts the procedure that we now have and puts it in the Constitution. It revises Section 10 of the present Article VII and, in that connection, we think eliminates some of the excess verbiage, and that the other requirements that are presently in Section 10 of the present Constitution the committee believes can be governed by statute or administrative procedure and is unnecessary detail in the Constitution.

**CHAIRMAN GRAYBILL:** Very well. You have before you the motion of Mr. Joyce, that when this committee does arise and report, after having had under consideration Section 9, that the same shall have been adopted. So many as are in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Now, ladies and gentlemen, I'm going to ask the clerk to read all the subsections, 1 through 5, of Section 10 at once because of some amendments that are going to be made here. I would ask you to pay close attention, because if we're going to debate this veto matter, we might as well listen to it once and understand it as it's read. Mr. Clerk, will you please read Section 10, subsection 1 to 5.

**CLERK HANSON:** "Section 10, Veto Power; subsection 1: All bills passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor, who shall sign or veto every bill within 5 days after its delivery to him, if the legislature is in session, or within 25 days, if the legislature is adjourned. The governor shall return vetoed bills to the legislature with a statement of his objections. Subsection 2: The governor may return any bill to the legislature with his objections and with a recommendation for an amendment or amendments to it. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for a second time for amendment. Subsection 3: Upon receipt of a veto message, the legislature shall reconsider passage of the vetoed bill. A two-thirds vote of the members present overrides the veto, and the bill shall become law. Subsection 4: If the legislature is not in session when the governor vetoes a bill, he shall return the bill, with his objections, to the legislature in a manner authorized by law. The legislature,as provided in Section 11, may reconvene itself to consider any bill so vetoed by the governor. Subsection 5: The governor may veto items in appropriation bills, and in such instances, the procedures shall be the same as upon veto of an entire bill." Mr. Chairman, Section 10.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, subsection 1, 2, 3, 4 and 5, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. In the veto power, what the committee tried to do is retain it essentially as it is now, with the addition of the amendatory veto and the elimination of the pocket veto. And our committee did not choose to adopt the recommendation of the Legislative Committee that we prohibit the Governor from vetoing appropriations for the Legislature. However, we did concur with the Legislative Committee that the Governor would have no power to veto constitutional amendments proposed to the United States, proposed constitutional amendments to the State of Montana, and any initiative or referendum measures. Our discussion of it follows in the comment which says that it removes the Governor from the process of amending the state and federal Constitution. Constitutional amendments, initially, must be approved by two-thirds in each house, if it's a bicameral, which is the same majority required to override a gubernatorial veto. Therefore, there's no reason to involve the Governor in the process. Similarly, the signature of the Governor is not required for resolutions because resolutions do not have the effect of law. Consistent with Section 1 of Article V of the present Constitution, the Governor has no veto power over initiative or referendum measures. By the requirement of subsection 1 that the Governor sign every veto bill presented to him, the pocket veto is eliminated. Furthermore, subsection 4 authorizes the Legislature to reconvene to consider postsession vetoes. I take it, in this connection, we have a little different than the Legislative Article about reconvening. We've got a two-thirds and they've already adopted a majority, I think, but we didn't know that at the time. Furthermore, Section 4 authorizes—or the time period for gubernatorial consideration of bills after adjournment of the Legislature has been lengthened from 15 to 25 days to give the Governor sufficient time to adequately study bills and in recognition of the logjam of legislation frequently passed in the closing days of the Legislature. The committee considered and rejected the so-called reduction veto, which is the power to reduce items in appropriation bills, because the members believed such a veto could result in irresponsibility on the part of the Governor. The reduction veto encourages the Legislature to appropriate large sums of money to popular causes, shifting the onus of reducing the appropriation to the Governor, while it also enables the Governor to thwart an activity or program without the stigma of killing it. The committee, however, did authorize the amendatory veto in subsection 2, which permits the Governor to return a bill to the Legislature with recommendations for changes that would make the bill acceptable to him. If the Legislature, by majority vote of the members present, accepts the Governor's recommendations, the bill is returned to the Governor for reconsideration. The Governor is prohibited from returning a bill a second time for an amendment. The amendatory veto accommodates the situation where the Governor objects to only parts of bills and recognizes its general merit. In the states which authorize amendatory veto, it is utilized more than the regular veto. The power of amendatory veto is intended to extend to appropriation bills. In addition, the item veto that we currently have in the Constitution is retained in subsection 5.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** Yes, sir.

**CHAIRMAN GRAYBILL:** Mr. Kelleher, you have an amendment. Do you care to have it read at this time?

**DELEGATE KELLEHER:** Yes, sir.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 10, Veto Power, by deleting the subsections 1, 2, 3, 4 and 5, beginning at line 14 through 30 on page 8 of the Executive Committee Proposal and lines 1 through 18 on page 9, and inserting in lieu thereof the following language: 'The governor may veto items in the appropriation bill for his office.' Signed: Kelleher."

**DELEGATE KELLEHER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** The effect of Mr. Kelleher's proposed amendment is to delete the veto power except for the Governor's right to veto items in the appropriation bill for his office.
Mr. Kelleher.

**DELEGATE KELLEHER:** Mr. Chairman and fellow delegates. The veto power, in the early days of our constitutional history in the United States, was given to the President to be used to veto bills which were unconstitutional. We still have this power, of course, in the Supreme Court, and we have it in the state Supreme Court. The veto power goes way back to the Romans, and we got it from Baron des Montesquieu, who got it from the British, and as I told you the other day, he was a great admirer of the Monarchial system. He did not care for the Republican system (Inaudible) —government—

**CHAIRMAN GRAYBILL:** Stay on the subject now, Mr. Kelleher.

**DELEGATE KELLEHER:** I'm staying on veto power, and I want to get rid of the veto power—

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE KELLEHER:** —and I want to show what's wrong with the veto power, Mr.

Chairman. I want to show where the veto power came from.

**CHAIRMAN GRAYBILL:** Okay.

**DELEGATE KELLEHER:** And I cannot show what's wrong with the veto power unless I show where it came from, Mr. Chairman. Montesquieu, as you know, said that a Republican form of government, which is the form of government that we have under Article IV—paragraph 4—of the federal Constitution, is like to a body without a head. The last time it was used in Britain was in 1707 by Queen Anne, and it has not been used since 1707 by the British. At the time of our Revolution, only Massachusetts and New York had the veto power. And Massachusetts had a single veto power and New York had a veto power combining the power of the Governor and the Justice of Supreme Court, and the reason for that was a document was to be cut down only if it were unconstitutional. Now, then, Thomas Jefferson never used the veto power, and Thomas Jefferson said it should only be used when a document is unconstitutional. I submit we do that through our Supreme Court. John Quincy Adams never used the veto power. It was only with the time of that wild Democrat, Andy Jackson, that they started to use it for reasons of expediency, rather than when a law was unconstitutional. North Carolina today, ladies and gentlemen, does not have a veto power and is one of the most progressive states in the southern part of the United States. I would like to read, if I may, a very short paragraph from Robert Lewis, who was former congressman—he's deceased now—written in 1935—former congressman for the State of Massachusetts and a scholar on state legislatures. "There can be no doubt that, where the governor and a majority of the legislature are of opposite parties, bills are sometimes passed with the deliberate purpose of embarrassment, compelling the governor to choose between signing, say, and extravagant appropriation in which he does not believe and losing some measure of popularity. On the other hand, governors unhampered by scruples, without fine sense of duty, have used the veto with the deliberate purpose of making political capital by the appeal to popular sympathy. When one man sets up his opinion against that of two or three hundred in the legislature, the masses are almost sure to approve his position because he is the underdog. The sort of message that kind of a governor finds it easy to write gets wide reading and hasty applause. The arguments of the authors of the bill, who may know a hundred times more about it than the governor knows and who may be the men of the soundest judgment and loftiest purpose, are ignored. The legislature is a sure loser in the unequal contest. The honors go to the virile, aggressive man of dominating personality who was willing to climb at the expense of fair play in the public welfare." The veto power, Mr. Chairman and fellow delegates, is a vicious, powerful weapon. It is the most powerful weapon in the arsenal of the lobbyist. Charles the First lost his head, literally, over the veto power at the time of the long parliament. Now, I'm no Oliver Cromwell, and I'm not suggesting that we do away with the Governor's head; I just want to get rid of his veto power. That isn't asking too much. Lastly, remember when Larry Margolis was here and spoke to us from that podium? He said two sentences that I'll never forget. "The legislature is not representative of the people, the legislature is the people. And before you put any limit in this Constitution on the authority of the people of this state, you better have a very, very serious reason for doing so." There's no veto power on us. It's our own wise judgment. That's the only veto power on us. And this body is very, very—in my opinion, being very conservative and very mature in its judgment and in its deliberations. I ask, "What right does an uncrowned king have to thwart the will of the people?" and I ask you to eliminate the veto power of the Governor except for control over his own appropriations. And this may not be necessary, I admit, because he may—if the money is appropriated for him, he doesn't necessarily have to spend it. But otherwise, I would urge you very—most strongly to exclude completely the veto power of the Governor. And I would like to have a roll call vote on my motion when it's voted and like to have five seconds please.

(Seconds rise)

**CHAIRMAN GRAYBILL:** The question now arises on Mr. Kelleher's motion to amend Section 10.

Mr. Melvin, for what purpose do you arise?

**DELEGATE MELVIN:** A point of clarification to the amendment, Mr. Chairman. It describes it as including lines 1 through 18 on page 9—

**CHAIRMAN GRAYBILL:** Yes, that's right. Mr. Kelleher, your description is a little all-inclusive. You threw out special sessions at the same time. (Laughter) So we have amended your preface—not the language, but your preface—to include lines 1 through 12 on page 9. Since that's all it encompasses, the veto power, I trust that's all right with you.

**DELEGATE KELLEHER:** The typist added that, and I'm sorry for that error.

**CHAIRMAN GRAYBILL:** That's okay. All right, the question now arises on Mr. Kelleher's motion to delete the veto power in its entirety except for the sentence "The governor may veto items in the appropriation bill for his office." We'll vote by roll call. The ballot is open. All those in favor of the proposal to delete the veto power, please vote Aye; opposed, please vote No.

Have all the delegates voted? Does any delegate wish to change his vote? The ballot is closed. Please take the roll.

| | |
|---|---|
| Aasheim | Absent |
| Anderson, J. | Absent |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Absent |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Absent |
| Burkhardt | Absent |
| Cain | Absent |
| Campbell | Nay |
| Cate | Aye |
| Champoux | Nay |
| Choate | Nay |
| Conover | Absent |
| Cross | Nay |
| Dahood | Absent |
| Davis | Nay |
| Delaney | Absent |
| Driscoll | Absent |
| Drum | Absent |
| Eck | Absent |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Absent |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill-Chairman | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Absent |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Nay |
| Jacobsen | Nay |
| James | Absent |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Absent |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Absent |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Absent |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Absent |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |

| | |
|---|---|
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Absent |
| Vermillion | Absent |
| Wagner | Nay |
| Ward | Absent |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 10 delegates voting Aye, 64 voting No.

**CHAIRMAN GRAYBILL:** 64 delegates having voted No and only 10 voting Aye, the motion of Mr. Kelleher fails. We're now on the veto power, Section 10, and there are some other amendments to subsection 1, so we'll consider it section by section now. Section 10, sub. 1.

Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. [illegible] before you an

**CHAIRMAN GRAYBILL:** Yes. Do you want us to read it here, Mr. Romney?

**DELEGATE ROMNEY:** Yes, please,

**CHAIRMAN GRAYBILL:** Will the clerk please read Mr. Romney's amendment.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 10, Veto Power, subsection 1, page 8, line 15, of the Executive Committee Proposal, by inserting the following words after the word 'except'; 'appropriations for the legislature.' Signed: Romney."

**DELEGATE ROMNEY:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** When the studies were made in the various committees concerning the various problems that were confronting the Convention, the matter of the veto was found to be of concern to both the Legislative Committee and the Executive Committee. It was—this difficulty was resolved by the chairmen of the two committees, Delegate Aasheim and Delegate Joyce, conferring and determining that the Executive Committee would handle the veto section. However, the Legislative Committee had already considered the matter, and it so happened that the determinations of the two committees was much alike, but they did have certain dissimilarities. Chief among them is the matter which I am handling at this time. You will find in Section 10 and second line, as indicated by the amendment, that we seek to include in the section the words "appropriations for the legislature" following the word "except", in line 15 on page 41 of the Executive booklet. This would mean that the Governor would have no power of veto over the operations of the—the appropriations made by the Legislature to carry on its work. If we're going to have a strong Legislature and a strong Governor, we must not provide the Governor, whoever he may be, with the power to clip the wings of the Legislature in a fiscal manner. And this could be done were he empowered to veto legislative appropriations. Now, we say, appropriations for the Legislature. That means distinctly for the Legislature and its various appendages. This would include the direct appropriations for the operation of the Legislature. It would also concern the Legislative post-audit, concerning which we talked this morning. It would also include a fiscal review office, Legislative Auditor. It would include the Legislative Council and Legislative interim committees. Now, it's quite patent that if the Legislature was unable to use its own—unable to appropriate adequately for its own operation, it cannot function properly. We see that in our own Convention here where some of us, at least, think that there was an inadequate appropriation for this Convention. There's also the interim committees. Presently, the best-noted interim committee is the Highway Committee, known as the "watchdog committee". I think it's been in operation now for three bienniums, possibly more, and I believe it is quite well established that it has well paid for itself. There's the Legislative Council, which is growing in popularity. It is a source of writing of most of the numerous bills introduced into the Legislature. It is, likewise, the source of such research and study as most legislators have available to them. It carries on a number of studies which the Legislature, by resolution, directs to it each session of the Legislature; and it's a bipartisan proposition, with three senators of each party and three representatives of each party composing its membership. Various studies on all sorts of subjects are made by the Legislative Council through subcommittees which draw upon the membership of the Legislature for membership, also on a bipartisan basis. All of these various legislative appendages are nourished by appropriations made by the Legislature. As Delegate Kelleher says, the Legislature is the people. It speaks for the people. It makes investigations and writes the laws for the citizenry. And it should be able to take care of its own purse. Now, we give the Legislature the power to make appropriations for all sorts of other state agencies and departments—including that of the Governor—and it would be shackled in its operation if it were hampered by veto measures in the hands of a Governor who might, for one reason or another, become hostile. I thank you.

**CHAIRMAN GRAYBILL:** Mr. Romney, if you'll allow the Chair a slight amount of editorship, I'd like to add a comma, without objection, after your thing, so that it makes more sense. Very well.

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I certainly am reluctant to take on the gentleman from Ravalli County, and I don't do it other than to explain the thinking of the Executive Committee. The whole theory of the veto, of course, has been gone into at some length, and, of course, the idea behind the veto is that you require two-thirds of the people's representatives to put some bills through over the objection of the Governor. That gives a better majority, but we thought that it was unnecessary to add this to the veto power for these reasons. It is not relevant in view of the action that we've taken here in allowing the Legislature to extend its sessions, to come back at their own motion, and so that whatever vice may have occurred before, when the Legislature was absolutely locked in to 60 days, does not exist if the new Constitution goes through as proposed. Therefore, we thought that there was no particular reason for excluding this on that basis. Secondly, we figured that if it was a virtual unanimous agreement of the Legislature—as I understand the Legislative Council and those things work—that the Legislature can handle this matter by sending the appropriation bill down to the Governor while they're still in session, and in accordance with the wisdom that Delegate Mahoney passed on today, they can wait until that is signed into law before they send down any other of the Governor's bills. And thirdly, the reason we thought it unwise to exclude it is, assuming for the purposes of argument that the Legislature does make an appropriation that passes the House by only one vote, then, for example, say the Legislature decides to appropriate a substantial sum of money to build a new chamber for itself. Now, of course, they should have that right, I suppose, but if it only passes by one vote, it shows that there is a sufficient division among the people's representatives and the Governor may veto it in that case on the theory that it really costs too much money and that the Legislature hasn't adequately funded the new building, or for whatever reason. So we thought, taking one consideration with another, that the amendment was not really necessary in view of the action of this Convention in freeing the Legislature so it can do its work.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President. I always believe in protecting the Legislature, but I still think that the Governor should have the powers—to give him—to keep the Legislature in line. Now that we're giving all this time to the Legislature, call themselves into session, continuous bodies, all of this, it might be well that he had to get at least a clearance of the Legislature—or, I mean, the Legislature should get his clearance unless by a two-thirds vote, and this is a little difficult to get. I can see them delving into great, enormous things. That we have empire-builders get into the Legislature the same as the others, and I think we should definitely leave the power of veto with the Governor on appropriations. I think that all of it—he is responsible. And partly—he has to sign the revenue measures or they won't get through. So I'd like to see the Legislature still brought back under the Executive, at least so one—just a majority can't run rampant. If you've got two-thirds, well and good, but I'd like to see it left the way it is.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Romney's amendment to subsection 1 of Section 10 of the Executive Article. He has made an amendment which makes the first line read, "All bills passed by the legislature except appropriations for the legislature, bills proposing amendments to the Montana Constitution", and so forth. So he has accepted appropriation for the Legislature. So many as shall be in favor of Mr. Romney's amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and so ordered. We're now debating Section 10, sub. 1, again and we have another proposed amendment. Mrs. Robinson, may we read your amendment?

Will the clerk read the amendment.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 10, subsection 1, page 8, line 19, of the Executive Committee Proposal by deleting the following words 'who shall sign or veto every bill' and insert in lieu thereof the following words and punctuation after the word 'governor': 'and shall become law, if he neither approves nor vetoes the bill.' Signed: Robinson."

**CHAIRMAN GRAYBILL:** Mrs. Robinson's amendment has the effect, on page 8 at line 19, in Section 10, sub. 1, of striking out the – presently, it says, "shall be submitted to the governor, who shall sign or veto"—she takes out "who shall sign or veto every bill" and she adds "which shall become law if he neither approves nor vetoes the bill."

Mrs. Robinson.

**DELEGATE ROBINSON:** Yes. Mr. Chairman, I'd like to make it clear that it does not delete the words after that. The next four lines are still included in my amendment. It would read—subsection 1 would read: "All bills passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor and shall become law if he neither approves nor vetoes such bill within 5 days", and the rest of the language is exactly the same. The Legislative Committee was in complete agreement with the Executive Committee that we would eliminate the pocket veto. We did not feel, however, that the proposed language by the Executive Committee did that as explicitly as we had done it in our original proposal. We checked the constitutions of other states that had eliminated the pocket veto, and they clearly indicate what happens to the bill if it is neither signed nor vetoed. And we merely make that provision that if he does not sign it or if he does not veto it, it becomes law. We are demanding that he cannot simply let it die.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I'm [illegible] no match for the delegate from Missoula in any verbal battle. And I agree that her's is better, and I have the permission of at least a portion of my committee that we accede to Miss Robinson's amendment. She's a better draftsman, and we thank you very kindly.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman, just a point of clarification—or order, I guess you might call it, but it's very difficult sometimes to know just where we are—whether we're on the majority or minority proposal. And if there were some way that we could stay on one or the other, it would help, I think.

**CHAIRMAN GRAYBILL:** We stay on the majority first, and we only go on the minority if it's moved. So we're on the majority report, on page 8, at line 19. I realize that there's two places you can find it. I use the first one, and some of you use the other one. But anyway, this amendment is on page 8, line 19, after the words "the governor" strike "who shall sign or veto every bill" and add in "and shall become law if he neither approves nor vetoes the bill within 5 days." Very well. The question is on Mrs. Robinson's amendment, which would have the effect of saying that if the Governor does nothing, then it becomes law, whereas the original text said that he either had to sign or veto it within 5 days. All those in favor of Mrs. Robinson's amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered.

Mr. Joyce.

**DELEGATE JOYCE:** I move that when this committee does arise and report, after having had under consideration Section 10, subsection 1, as amended of the Executive proposal, that the same be recommended for adoption.

**CHAIRMAN GRAYBILL:** Very well. You've heard the motion of Mr. Joyce that this subsection 1 of Section 10 now be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** So ordered. Now, subsection 2, on page 8, at the bottom—Does anyone wish it read again?

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 10, subsection 2, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. Subsection 2 says that the Governor may return any bill to the Legislature with his recommendations for an amendment. This is the amendatory veto. And if the Legislature passes the bill in accordance with the Governor's recommendation, it sends the bill back to the Governor for his recommendation. The Governor may not, however, return the bill a second time for an amendment. And the theory here is that this is apparently the amendatory veto; we've taken it out of another state. Our discussion indicates that it works well in the other states in that it enables the Governor to pick up some errors that may have inadvertently been overlooked by the Legislature, and they simply concur in his amendments, send it back, and he signs it without any fuss. In not requiring two-thirds to override it, they just make the amendment by a simple majority. It seems sensible. It seems to encourage cooperation between the Governor and the Lieutenant Governor—the Governor and the Legislature—and maybe is a device to save the Governor's head.

**CHAIRMAN GRAYBILL:** Very well. Members of the committee, you have before you subsection 2 of Section 10, on the recommendation of the Chairman of the Executive Committee that when this body arises and reports, that the same shall be approved.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, may I ask a question—

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE ESKILDSEN:** —of Chairman Joyce?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Yes, I yield, Mr. Chairman.

**DELEGATE ESKILDSEN:** In reading this, if the Legislature passes a bill in accordance with the Governor's recommendation, it shall again return the bill. Now, if the Legislature fails to pass it, then it merely dies. Is that your understanding?

**DELEGATE JOYCE:** Well, if the Legislature fails to concur, in effect, in the Governor's amendment, then the motion would have to be made to override the Governor's amendment, or they could just send it back up to him, I suppose, (Inaudible) telling him that they refuse to concur in his amendment, and then he can formally veto it or not. And I'd—I would think that would be the procedure; and then if he does formally veto it, it comes back down, then they have to override him by two-thirds.

**CHAIRMAN GRAYBILL:** Is there any further discussion? Very well. You've heard Mr. Joyce's motion that this subsection 2 of Section 10 be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** So ordered. Do we need to—anybody want us to reread subsection 3?

If not, Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 10, subsection 3, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. This section is the current law. It simply says that upon receipt of a veto message, the Legislature shall reconsider passage of the vetoed bill; and two-thirds vote of its members overrides the veto and the bill becomes law. It carries with it the implication that if two-thirds don't, it doesn't become law.

**CHAIRMAN GRAYBILL:** Very well. You've heard the recommendation of Chairman Joyce that, when this committee arises and reports, that subsection 3 of Section 10 shall be considered adopted. All those in favor of the motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Section 4, Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, subsection 4, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. In this section, the committee tries to meet the problem that if the Legislature is not in session and the Governor vetoes a bill, that he will return his objections to the Legislature in a manner authorized by law. Now, what we had in mind there is that he probably would send it to the Secretary of State, and that the Legislature would set up—pass—some law that would then direct the Secretary of State to advise all the legislators, who were not in session, of what had happened. We didn't really see—think we had the wisdom to work out the details of that procedure, but at any rate, we thought the Legislature would surely do it. And then, once they've gone home and he's vetoed the bill, he must veto it—he can't just let it die by the pocket veto anymore—and then we provided that the Legislature may reconvene itself, in accordance with Section 11 of our article, to consider the vetoed bill. And, of course, Section 11 requires a two-thirds request of all the members before the presiding officers can reconvene the Legislature. I thought, if my memory serves me correctly, in the Legislative Article, the Legislature can come back into these special sessions on a simple majority vote—and so I would like to ask Delegate Harper if he would yield to a question to clarify that point. Delegate Harper, will you yield?

**DELEGATE HARPER:** Yes, I will.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE JOYCE:** Mr. Harper, does the Legislative Article authorize the Legislature to come back in on a simple majority? I've forgotten.

**DELEGATE HARPER:** So have I, but we'll look it up.

**DELEGATE JOYCE:** Well, I've just been informed that Section 6 of the Legislative report—majority report—reads as follows: "The legislature may be convened in special session by the governor or at the written request of a majority of the members." So, if my memory was correct—and so I would, therefore—when we get to Section 11, I'll move to make that a majority. But with that understanding, I would still like the Committee of the Whole to approve subsection 4 in accordance with my previous motion, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you the motion of Mr. Joyce that when this committee does arise and report, after having under consideration Section 10, subsection 4, that the same be approved. So many as are in favor of that motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Subsection 4 is adopted. Subsection 5, Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10, subsection 5, of the Executive Article, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** This section preserves the current line-item veto that's in the Montana Constitution, the idea being that general appropriations bills go through with more than one item in there. There may be a hundred different appropriations. He doesn't have to veto the entire appropriation bill if he is displeased with only one item. He can veto that one item. And when he does so, the procedure on this is the same as on any other bill that he vetoes. It requires the two-thirds vote to override him.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you, on the recommendation of Mr. Joyce that when this committee does arise and report, after having had under consideration subsection 5 of Section 10, that the same shall be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**DELEGATE BLAYLOCK:** Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Blaylock, for what purpose do you arise?

**DELEGATE BLAYLOCK:** I wish to make an amendment.

**CHAIRMAN GRAYBILL:** Well, we have nothing before us at this time. What do you want to—

**DELEGATE BLAYLOCK:** I wish to offer a subsection 6.

**CHAIRMAN GRAYBILL:** Does it concern the veto power?

**DELEGATE BLAYLOCK:** Yes, it does.

**CHAIRMAN GRAYBILL:** I had ruled that all new matter would be at the end, but I think if it's on the veto power, let's go ahead. Do we have a copy of it?

**DELEGATE BLAYLOCK:** I'll give you a copy if—

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE BLAYLOCK:** This is the proposed amendment, which would be subsection 6 of Section 10. It would read like this: "If the legislature is not in session when the governor vetoes a bill, copies of the bill, together with the reasons for the veto, may be delivered in a manner authorized by the legislature to all legislators. If two-thirds of the members of the legislature return the bill with an affirmative vote, attested by a notary public, within 10 days, the bill shall become law." And I'll bring this up to you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Blaylock has proposed adding a subsection 6, the purpose of which is to allow two-thirds of the members of the Legislature to override the Governor's veto by a mail ballot. The source of this is the Legislative Article, isn't that right? Wasn't this in the Legislative proposal?

**DELEGATE BLAYLOCK:** No.

**CHAIRMAN GRAYBILL:** All right. Well—

**DELEGATE BLAYLOCK:** I had proposed it to the Legislative group, and they had considered it, and it had gone into the Executive. And neither of them included it, so I wish to include it this time.

**CHAIRMAN GRAYBILL:** All right. I think I'd better read it again—

**DELEGATE BLAYLOCK:** All right.

**CHAIRMAN GRAYBILL:** —since you don't have it printed. "If the legislature is not in session when the governor vetoes a bill, copies of the bill, together with the reasons for the veto, may be delivered in a manner authorized by the legislature to all legislators. If two-thirds of the members of the legislature return the bill with an affirmative vote, attested by a notary public, within 10 days, the bill shall become law."
Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President. The reason for this is that often the—as has been already stated here, and I shall speak very briefly to this—at the end of the session, there is a rush of bills which hit the Governor's desk. And we have had as many as 19 bills vetoed after the sessions. And it seems to me that bills having gone through the legislative process, especially when you're in a bicameral Legislature, that these bills have been considered, and if the Governor vetoes, well and good. But the legislators should be able to take another look at that. And—but if they have gone home, there's not much they can do. This would allow these bills to be sent to the legislators, and if two-thirds vote again for that bill, it will come back in and it will become law. I suspect that it would be very, very seldom that this should happen, but there have been times when there have been exceedingly fine bills that have been vetoed after the Legislature has gone home, and then we had to wait for another year and a half before the bills could be considered again. This would also—if this were adopted, it would avoid the cost of calling the legislators back into session. It would be, I think, a very economical way for the legislators to take one last look and make their final decision. And that's all I have to say.

**DELEGATE JOYCE:** I'll certainly hesitate, also, to oppose the distinguished gentleman from Yellowstone County, and all I rise to do is to explain to the Convention the position that was taken by the Executive Committee, and that was this: that the Legislature, whether it's unicameral or bicameral, is a deliberative body. And if bills are passed in the last session in a hurry and they get down to the Governor's desk and the Governor is displeased with them so that he feels constrained to veto them, we have provided already that they will set up a procedure where he will veto [illegible] send it to the Secretary of State presumably, they will get the word out to the Legislature. But if it is a bill that is of sufficient importance that it should be reconsidered by the Legislature, then we [illegible] possible to require them to come back and deliberate with one another. Now, of course, the argument is that they've already deliberated enough and their mind's made up. But it's possible that the Governor would think of some reason for vetoing this bill that the Legislature, while they were in session, had never considered, and so that we thought the whole theory of government and of legislating is that the Legislature is a deliberative body, that you gain ideas from your fellow legislators, and it is only when you are acting in session and in concert, as a body, that you can effectively legislate. And therefore, we thought that if the bill is an outrageous exercise of executive power that the Legislature feels is of great importance, then they can, of course, by a simple majority, call the session back into session and override the Governor's veto. So that is why we reluctantly did not accept Mr. Blaylock's proposal, although we did include part of it in that we provided that the legislators will be advised as to why the Governor vetoed it after they go home.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman. I rise in support of Mr. Blaylock's amendment. I was in the Legislative Committee, and when we discussed this proposal, initially, we were very receptive to the idea. It was after we confer with the Executive Committee that some of the members of our committee felt that, perhaps, they were right. And I do concur with Delegate Joyce's remarks. The Legislature is a deliberative body, and I think that this provision would not be used very frequently. But, on the rare occasions when it could be used, when the legislators had deliberated fully on the matter, and if the Governor vetoed it and if it could be overridden by mail, I think it would save the state a great deal of money. They would not have to call themselves into special session, and in a very simple manner, they could override the veto. Therefore, I support Mr. Blaylock's amendment.

**CHAIRMAN GRAYBILL:** The issue is on Mr. Blaylock's amendment which would add a subsection 6 to Section 10 of the Executive Article as follows: "If the legislature is not in session when the governor vetoes a bill, copies of the bill, together with the reasons for the veto, may be delivered in a manner authorized by the legislature to all legislators. If two-thirds of the members of the legislature return the bill with an affirmative vote, attested by a notary public, within 10 days, the bill shall become law." So many as shall be in favor of that amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** As many as are opposed, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. Please use the voting machines for an unrecorded roll call vote.

Have all the delegates voted? Does any delegate wish to change his vote? The vote is closed. Will you please take the roll call.

**CLERK HANSON:** Mr. Chairman. 42 voting Aye, 46 voting No.

**CHAIRMAN GRAYBILL:** 46 having voted No and only 42 having voted Aye, the amendment fails. Will the clerk please read Section 11.

**CLERK HANSON:** "Section 11. Special Session. Whenever the governor considers it in the public interest, he may convene the legislature, either house, or the two houses in the joint session. At the written request of two-thirds of the members of each house, the presiding officers of both houses shall convene the legislature in special session." Mr. Chairman, Section 11.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move as an amendment to Section 11, as written, that the last sentence be deleted or, no—it has—a—no, strike that. I move that the last sentence be amended in line 26 of page 29 by striking the words "two-thirds" and inserting in lieu thereof "a majority of".

**CHAIRMAN GRAYBILL:** Just "a majority" is enough. "a majority of the members of each house"?

**DELEGATE JOYCE:** Right; yes, sir.

**CHAIRMAN GRAYBILL:** Mr. Clerk, when you read that, you didn't read of each house. What did you read?

**CLERK HANSON:** Yes, I did.

**CHAIRMAN GRAYBILL:** You did? Very well. The amendment proposed by Mr. Joyce is to strike out the words "two-thirds" in the middle of Section 11—and, if you're on page 9, that's on line 16—and add in place thereof "a majority". So many as shall be in favor of that—

Excuse me, Mr. Loendorf, do you care to speak to that?

**DELEGATE LOENDORF:** Yes. Mr. Chairman, would Mr. Joyce yield?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Mr. President, I yield.

**DELEGATE LOENDORF:** Mr. Joyce, why don't we simply delete the entire section, since it's covered by the Legislative Article?

**DELEGATE JOYCE:** Well, I was going to do that, Mr. Loendorf, but then, if you recall—that we made a reference to it in Section 10, subsection 4. Now if, Style and Drafting will just pick that up and transfer it back to whatever section that is of the Legislative, it would be all right. But it seemed to me that, maybe, so the delegates can vote intelligently on this thing, that there's no particular harm in just writing "a majority" in there, being that I've already made the motion and taken up the time already.

**CHAIRMAN GRAYBILL:** Very well. The motion is on Mr. Joyce's amendment to replace the words "two-thirds" by the words "a majority". All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** So ordered.
Mr. Joyce.

**DELEGATE JOYCE:** I move that when this committee does arise and report, after having had under consideration Section 11 of the Legislative Article, as amended, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. What we have done here is we've revised the existing Montana Constitution in that we have provided—still retained the power of the Governor to call the Legislature, in the public interest, back into special session. We have deleted, however, from the Governor's power the power he now has to limit the consideration of bills or subject matter. And the reason, of course, we have done that is that since the Legislature—once it's called back into special session by a simple majority vote—can resolve themselves into a special session of their own, that there's no point in providing for a futile act. And so the Governor can call them back into special session, and he can say, "Here's what I would like you gentlemen to consider, but, of course, if you wish, you can consider anything else." And in the second paragraph we've been—second sentence, what we've done there is provided that—what the Legislative Committee has already suggested and which has been approved by the Convention.

**CHAIRMAN GRAYBILL:** Mr. Harper. the Chair is aware that you want to amend this by deleting the last sentence.

**DELEGATE HARPER:** No, Mr. Chairman, I pass that by; I think that's been cared for.

**CHAIRMAN GRAYBILL:** All right. So we'll pass that by. Very well.

**DELEGATE HARPER:** I'd like to ask Mr. Joyce a question on the first part of this. Mr. Joyce, I assume from your last remark that you wrote this sentence with the intent that it would apply to either a unicameral or a bicameral Legislature. The—

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. Yes, we did. Didn't we do a very good job?

**DELEGATE HARPER:** I'm afraid not. (Laughter) You say, whenever the Governor considered it in the public interest, "he may convene the legislature, either house, or the two houses in joint session." I see now what you mean. I was all prepared to attack that on the basis that in the majority bicameral report, Section 10, subsection 6, we had already decided that the two houses must always meet together, that we would not have a meeting of one house. In other words, he couldn't call the House without the Senate or vice versa, and now that I see your intent, perhaps a simple redrafting of it would be sufficient.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** That was our intention, I think. That—'course, the present Constitution, if you'll note, is somewhat ambiguous in this connection in that it says that he can call either house or a special session. I thought that perhaps what the current Constitution means is that, if it's just a question of confirming somebody, they would just want to call the Senate. But I think that what it really means is that when there's bicameral, you shouldn't really have to call both houses. But—

**CHAIRMAN GRAYBILL:** Mr. Joyce. Since Mr. Harper is correct that we already did say that they had to meet together, if you—you could just strike everything after the word "legislature" and say, "he may convene the legislature". Then you're going to have it right.

**DELEGATE HARPER:** Period.

**CHAIRMAN GRAYBILL:** Now, Style and Drafting can also do that. I don't care how—where we do it.

**DELEGATE JOYCE:** I'm willing to accede to that suggestion, and the amendment then would be to strike all of line 25, page 29, after the word "legislature"—

**CHAIRMAN GRAYBILL:** Right.

**DELEGATE JOYCE:** —and substitute for the comma, I guess, a period.

**CHAIRMAN GRAYBILL:** Right.

**DELEGATE JOYCE:** I move that amendment.

**CHAIRMAN GRAYBILL:** All right. So many as are in favor of amending the first sentence in Section 11 to read, "Whenever the governor considers it in the public interest, he may convene the legislature." So many as are in favor of making it read that way instead of the way it reads, please say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** So ordered.

**DELEGATE AASHEIM:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce still has the floor, but I'll come back to you, Mr. Aasheim.

Mr. Joyce.

**DELEGATE JOYCE:** I now move that when this committee does rise and report, after having had under consideration Section 11 of the Executive Article, as amended, that the same be adopted.

**DELEGATE AASHEIM:** Mr. Chairman. Question.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** In the Legislative Article, we say this: "The legislature may be convened in special sessions by the governor, or at the written request of a majority of the members." We don't say "a majority of each house", so we're going to be in conflict.

**CHAIRMAN GRAYBILL:** Mr. Joyce, do you care to straighten this out so that you don't have a substantive issue for Style and Drafting? You could do that by striking the words "of each house".

**DELEGATE JOYCE:** Also amend.

**CHAIRMAN GRAYBILL:** All right, in line 17 on page 9—and, anyway, it's in the second sentence of Section 11—it should then read: "At the written request of a majority of the members, the presiding officers of both houses may convene the legislature." So many as shall be in favor of that amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Now, it seems to me that we've given Style and Drafting only a Style and Drafting problem.

Mr. Joyce.

**DELEGATE JOYCE:** Well, Mr. Chairman, then I again move that when this committee does arise and report, after having had under consideration Section 11 of the Executive Article, that it recommend the same be adopted as amended.

**CHAIRMAN GRAYBILL:** You've heard the motion of Mr. Joyce that when this committee does arise and report, after having under consideration Section 11 of the Executive Article, that it recommend that the same do pass. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** It's adopted. Mr. Roeder, for what purpose do you rise?

**DELEGATE ROEDER:** I think you may have been wrong on your statement that we're left with just a Style and Drafting problem, because the way that thing reads in the Legislative Articles that came off the magic typewriters is that the Legislature may be convened in special sessions or at the written request of a majority of the members. So, they're not, in substance, the same.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. I think that if I made a motion to recess, that the people involved in this could straighten it out; and when we come back from recess, it would be much easier to present it for the whole floor. So, I move we stand in recess until 3:15 today.

**CHAIRMAN GRAYBILL:** All right. The motion is to stand in—wait a minute. The motion is to stand in recess. I'd like to ask those on the rostrum here to remain in their places for a purpose and the rest of us to recess if the motion passes. All in favor of the motion to recess, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** So ordered.

(Convention recessed at 3:04 p.m.—reconvened at 3:27 p.m.)

**CHAIRMAN GRAYBILL:** Convention will be in session. The Convention is in session. Ladies and gentlemen of the committee, we were considering Section 11, Special Session. We had amended it to read, "Whenever the governor considers it in the public interest, he may convene the legislature. At the written request of a majority of the members, the presiding officer of both houses shall convene the legislature in special session." When we stopped, Mr. Roeder and Mr. Joyce were discussing some language. Mr. Joyce, have you any changes or is it all right as amended?

**DELEGATE JOYCE:** Will Delegate Roeder yield?

**CHAIRMAN GRAYBILL:** Mr. Roeder?

**DELEGATE ROEDER:** I'll yield.

**DELEGATE JOYCE:** Dick—

**DELEGATE ROEDER:** Yes.

**DELEGATE JOYCE:** Once you picked up that we did change "two-thirds" to "majority", did you have any further changes?

**DELEGATE ROEDER:** No, the only problem was that the Chairman read it wrong when he read the thing. That's the only thing that—the only problem.

**CHAIRMAN GRAYBILL:** Originally or now?

**DELEGATE JOYCE:** Originally, I think. Just a slip of the tongue.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE ROEDER:** (Inaudible) we adopt the votes, you had misread it. You had read the unamended version. There's really no problem.

**CHAIRMAN GRAYBILL:** All right, are we ready to adopt Section 11? Members of the committee, you have before you, on the recommendation of Mr. Joyce that when this committee does arise and report, after having had under consideration Section 11, that the same be adopted. The language is, "he may convene the legislature." And the other language: "At the written request of a majority of the members, the presiding officer of both houses shall convene the legislature in special session." So many as are in favor of Section 11, as amended, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered. Mr. Clerk, will you read Section 12.

**CLERK HANSON:** "Section 12. Pardons. The governor shall have the power to grant reprieves, commutations and pardons after conviction, reinstate citizenship, and may suspend and remit fines and forfeitures subject to procedures prescribed by law." Mr. Chairman, Section 12.

**CHAIRMAN GRAYBILL:** Mr Joyce

**DELEGATE JOYCE:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 12 of the Executive Article, that it recommend that the majority report, as read by the clerk, be adopted

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** On this section, the minority report—there is a difference between the two, and perhaps it is then in order for you to recognize Mr. Wilson to move the minority report.

**CHAIRMAN GRAYBILL:** Do you want to make any explanation of the majority report?

**DELEGATE JOYCE:** Yes, I would like to.

**CHAIRMAN GRAYBILL:** Why don't you explain it, and then we'll take his.

**DELEGATE JOYCE:** All right. What the majority of the committee has done on Section 12 is undertaken to amend Section 9 of the current Montana Constitution, which is on page 21 of the blue book, if anyone wants to get it. It's Section 9 of Article VII, the Executive Article. As currently written, this is an amendment that was put through by a vote of the people in December, 1954. Prior thereto, under the original Constitution, the Board of Pardons consisted of the Governor and the Attorney General and the State Auditor. In 1954, on our constitutional amendment, that was changed to provide that there would be a Board of Pardons appointed by the Governor, and in this particular section the majority report is adopting the language of the first four lines of the current Constitution and is striking the proviso thereafterwards. We did this after—on recommendation of the reorganization director and with the concurrence of the present Chairman of the Board of Pardons—that is, what I mean to say there is, they didn't tell us to do that, but they had no objection to doing that. And the reason we did it is we believe that the present section—deleting after the proviso—or the revised section, in which we delete everything in the current Constitution after the proviso with reference to the Board of Pardons—is proper in that we believe that the Governor should have the power to grant reprieves, commutations and pardons. Then we say, it shall— his power in that connection is made subject to procedures prescribed by law, and the Legislature has now appointed—provided for an appointive board of lay pardons, and it, no doubt, will continue to do so. And yet it seemed to a majority of the committee unnecessary to require it, and the Executive Reorganization director and the present Chairman of the Board of Pardons recommended the deletion. The historical power of the Chief Executive to show mercy should be retained, and the majority believe that there is no constitutional need for a buffer board appointed by the Governor. And the key word there is "constitutional", the idea being that the Legislature can and may set up a board, and further than that, the Governor can request the Board of Pardons to make recommendations before he does commute sentences or exercise his executive clemency. But all we were doing in the majority, here, is we are not requiring him to get the prior approval of the Board of Pardons. The Board of Pardons is a constitutional office by virtue of being contained in the present Article VII, Section 9. And, we—the majority submits it's unnecessary to have this board as a constitutional office. When it got down to being enacted on by the Legislature, they combined this constitutional Board of Pardons with the legislative Board of Parole, and they call it the Board of Pardons and Parole. And, of course, 98 percent of their work is in connection with paroles. But, under the present situation, the point at issue is this—if a prisoner is in the state prison, he cannot be pardoned by the Governor unless he gets the prior approval of this Board of Pardons, and we submit that any Governor can still use that Board of Pardons and make—or the Legislature can require that prior approval by the Board of Pardons, but it's not necessary to continue on this Board of Pardons in the Constitution. I might further add that, by making no reference to the Board of Prison Commissioners in Section 20 of the majority committee report—I'll correct that—by making no reference to the Board of Prison Commissioners, which is presently provided for in Section 20 of Article VII, we are in effect repealing that, and the reason why we are repealing it is that for many years now, the Board of Prison Commissioners set up in the Constitution, which also consisted of the Governor and the Attorney General and the State

Auditor, has not, in fact, been functioning; rather, the prison is being controlled under the Department of Institutions; and so we are in effect making constitutional what the state has been doing all these years and relieving these three people from violating the present Constitution, and we recommend repeal to conform to the facts as they really are.

**CHAIRMAN GRAYBILL:** The Chair would recognize Mr. Wilson.

**DELEGATE WILSON:** Mr. President, I move an amendment to Section 12 of the majority article to include—to adopt the minority proposal. You'll find that on page 51. Would you have the—have it read, please.

**CHAIRMAN GRAYBILL:** Or page 42. Very well. Mr. Wilson, your amendment to provide for the minority report for Section 12 is accepted. Do you wish to discuss it?

**DELEGATE WILSON:** Would the clerk read it, please.

**CHAIRMAN GRAYBILL:** Oh, all right, excuse me. Mr. Clerk, would you read it. Mr. Wilson, the first paragraphs are identical, isn't that correct?

**DELEGATE WILSON:** Yes.

**CHAIRMAN GRAYBILL:** So the clerk will read the second section, the second paragraph, which is an addition in the minority report.

**CLERK HANSON:** Second paragraph, minority report, page 42. "This action by the governor shall be upon the recommendation of a board of pardons. The legislative assembly shall by law prescribe for the appointment and composition of said board of pardons, its powers and duties; and regulate the proceedings thereof." Mr. Chairman, second paragraph to Section 12, minority report.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** We agree with the majority of the Executive Committee, except that we feel it is appropriate to establish constitutionally the Board of Pardons. The pardon power of the Governor is of such importance that it should not be exercised without the prior advice and consultation of a board of lay and professional persons responsible for the state correctional program. Mr. President, in talking with some of the former Governors and different people, they felt that this was a necessity that this be provided for in the Constitution, that they would have these people for the Governor to consult with. It is an important decision that he would have to make, and without some consultation and advice, he would be at a loss to know how to proceed. So it is with the thought in mind that we would provide the board for the Governor, to assist him in making these decisions. Mr. President, I move the adoption of the minority report.

**CHAIRMAN GRAYBILL:** Very well. The issue is on the substitute—or the amendment by Mr. Wilson to add the second section of the minority report to the existing section of the majority report, which is identical to the first paragraph of the minority report.

Mr. Roeder.

**DELEGATE ROEDER:** Mr. Chairman, I rise in opposition to Mr. Wilson's attempts to preserve the Board of Pardons, and I wonder if Mr. Dahood would yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Dahood?

**DELEGATE DAHOOD:** I yield, Mr. Chairman.

**DELEGATE ROEDER:** Mr. Dahood, you're a prominent lawyer, and I wonder if—[you] would give us your opinion on this issue. Do you think that if we removed the Board of Pardons, the Governor would suddenly release upon society all the cons from Deer Lodge?

**DELEGATE DAHOOD:** I don't think there's any such chance that that could happen under any circumstance, and I think the Governor, if he's going to be a strong executive, should have the type of power that we're talking about; and so, consequently, I would submit that I would agree with the majority report.

**CHAIRMAN GRAYBILL:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman, I believe Mr. Dahood did a little more than answer the question, but that's all right. It just saved him getting on the floor again. (Laughter) I can't help but recall last night, when we battled around in this chamber and we finally decided that an 18-year-old could hold the office of Governor. Now, are we really serious when we say that anybody 18 years old—I don't care how smart they are—not belittling anyone 18 years old at all—I've talked to many of them and they say "Why, we don't even care too much about taking the responsibility to vote, let alone being Governor."—now, are we actually serious when we're talking about an 18-year-old making decisions of releasing someone from prison, commuting death sentences, if we retain that, without a Board of Pardons for advice. I think we'd better get back on the ground here and kind of get a little realistic about these things. I thank you, Mr. Chairman

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Would Mr. Joyce yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce, will you yield?

**DELEGATE JOYCE:** I yield.

**DELEGATE HARPER:** I'd just like to be clear on this. If we take the reference to the Board of Pardons out of the Constitution, does that mean that we automatically do away with the Board of Pardons?

**DELEGATE JOYCE:** No, it's still on the statute books.

**DELEGATE HARPER:** And until the Legislature—excuse me, may I ask another question, Mr. Chairman?

**CHAIRMAN GRAYBILL:** You may.

**DELEGATE HARPER:** Until, then, the Legislature strikes that, then the Board of Pardons will remain in effect with pretty much its same composition and way of working?

**DELEGATE JOYCE:** Yes, and this constitutional provision provides that the Legislature may set up procedures for the Governor to exercise his pardon powers so that the Legislature can, in effect, limit the Governor's power by law, and it's simply, I guess, a quibble over whether or not it should be in the Constitution or whether we should trust the Legislature to continue to have a Board of Pardons or—and to give the Legislature some flexibility of how many would be on or how they would do this in the future. That's the substance of the dispute, as I understand it.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Wilson's amendment, which adds the second sentence to Section 12 on Pardons. The language added is: "This action by the governor shall be upon recommendation of a board of pardons. The legislative assembly shall by law prescribe for the appointment and composition of said board of pardons, its powers and duties; and regulate the proceedings thereof." So many as shall be in favor of the motion to add that sentence as an amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and so ordered. Very well. The issue, then, is on the basic Section 12. Members of the committee, you have before you the recommendation of Mr. Joyce that when this committee does arise and report, after having under consideration Section 12 on Pardons, that the same shall be adopted. All in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it, and so adopted. Will the clerk read subsection 1 of Section 13.

**CLERK HANSON:** "Section 13, Militia; subsection 1. The governor shall be commander-in-chief of the militia forces of the state, except when these forces are in the actual service of the United States, and shall have power to call out any part of the whole of said forces to aid in the execution of laws, to suppress insurrection or to repeal invasion."

**CHAIRMAN GRAYBILL:** "Repel invasion."

**CLERK HANSON:** "Repel."

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 13 of the proposed Executive Article, that it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** The Article XIV of the current Constitution, which is on page 39 of the blue book, for anyone who is using it, has five sections pertaining to military affairs and the militia, and if you will turn there, you will note that the militia that's now currently provided for in the Constitution consists of all able-bodied male citizens of the state between the ages of 18 and 45 except those that are exempted by laws of the State of Montana or the United States. It also provides that the Legislative Assembly may provide by law for the organization, equipment and discipline of the militia and shall make rules and regulations for the government of the same. The organization shall conform as nearly as practicable to the regulations for the government of armies of the United States. In Section 3, the Legislative Assembly shall provide by law for maintaining the militia by appropriate appropriations from the state. Section 4 says that the Legislative Assembly shall provide by law for the safekeeping of the public arms, military records, relics and banners of the state. Section 5 says the Governor, with the consent of the Legislature—that when the Governor, with the consent of the legislature, should be out of the state in time of war at the head of our military forces, he shall continue to be Commander-in-Chief of all military forces of the state. And we've just modernized this. We've never really had a militia in that sense. All this provides is that the new amendment, which is unanimous on the committee, is that the Governor will be the commander-in-chief of the militia forces of the state except when they are in the actual forces of the United States, and then he shall have the power to call out all the whole of said forces to aid in the execution of the laws, to suppress insurrection or to repel invasion. We did strike the word "male" out of there as the comments show. We did that out of deference to the two charming ladies who were on our committee who volunteered all the women of the State of Montana for militia duty—(Laughter) and we struck all the age requirements out of there just so that anybody, as provided by law, can be summoned into the militia, and we think that we have boiled down five sections into one section and have made an improvement of the present Article XIV.

**CHAIRMAN GRAYBILL:** Ladies and gentlemen, we are considering Section 13, sub. 1, only at the moment. Mr. Joyce discussed sub. 2, but we are considering sub. 1 only.

Mr. Lorello, you have an amendment. Would you like it read?

**DELEGATE LORELLO:** Yes.

**CHAIRMAN GRAYBILL:** Will the clerk please read it.

**CLERK HANSON:** Mr. Chairman. I move to amend section 13, page 31, or page 9, line 15, or line 30 on page 9 of the Executive committee majority report by striking the period after the word 'invasion' and add a comma and the following words: 'or to protect life and property in natural disasters.' Signed: Lorello."

**CHAIRMAN GRAYBILL:** The substance of Mr. Lorello's amendment is to say that the Governor shall have the power to call out the militia to do the things that are listed there, including repel invasion or to protect life and property in natural disasters. It has the effect of adding natural disasters to his power to call them out.

Mr. Lorello.

**DELEGATE LORELLO:** Yes, Mr. Chairman, this is probably our most important area. I would—statewide, at least. All we're trying to do is add this one sentence that we could also be used to protect life and property in natural disasters. I think we all realize that probably we'll use more throughout the state on forest fires, floods, riots, rescue work and that type of thing. These are functions that we're prepared to do that we can assist in, and I hope that you'll give it your consideration. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** The committee does not resist the amendment.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Will Mr. Joyce yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Mr. Chairman, I yield.

**DELEGATE HARPER:** I am not necessarily opposing this, but suppose some person in Helena, whom I am supposed to represent, asked me, "Why did you keep that?"—what would be the answer? Why do we keep this section in here at all?

**DELEGATE JOYCE:** Well, I suppose the answer I'd give is, it's in the current Constitution, and it has relevance in that in the event there ever [illegible] on or there were an insurrection, that it's the duty of the State of Montana to protect its people and, while we have police forces, if it [illegible] that bad, and I can't conceive that it ever would, that the Governor would have the power to call out the militia to protect the citizens.

**DELEGATE HARPER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Will Mr. Joyce yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Yes, I will.

**DELEGATE HARPER:** Does this include the National Guard?

**DELEGATE JOYCE:** No, the National Guard, as I understand, is provided for in state law, but it really is also a part of the federal army, and so if, for example, the National Guard were at war—had all the members thereof having been called, say, to fight in some foreign land, so that they wouldn't be around here, why, the Governor would have the power to summon each of us for the militia to protect the public welfare; and it seems to me that it's never going to happen, but it's absolutely essential that we do provide for that unlikely contingency.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Lorello's motion to add the paragraph—or the sentence "or to protect life and property in natural disasters" to Section 13, sub. 1. All in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It is adopted. The issue is now on Section 13, as amended. Members of the committee, you have before you the motion of Mr. Joyce that when this committee does rise and report, after having under consideration Section 13, sub. 1, of the Executive Article, that the same shall be reported as having been adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** So ordered. Will the clerk read Section 13, sub. 2.

Mr. Joyce, do you need this before we read it?

**DELEGATE JOYCE:** No.

**CHAIRMAN GRAYBILL:** No. Section 13, sub. 2.

**CLERK HANSON:** "Section 13, sub. 2. The militia forces shall consist of all able-bodied citizens of the state except such persons as are exempted by law." Mr. Chairman, subsection 2.

**CHAIRMAN GRAYBILL:** Mr. Joyce explained that. If he wishes to explain it further, he may.

**DELEGATE JOYCE:** I do not. I move that when this committee shall arise and report, after having had under consideration Section 13, subsection 2, of the Executive Article proposed, that it recommend that the same be adopted.

**CHAIRMAN GRAYBILL:** You have heard the motion of Mr. Joyce. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and it is adopted. Mr. Clerk, will you read Section 14, sub. 1.

**CLERK HANSON:** "Section 14, subsection 1. If the governor-elect is disqualified or dies, the lieutenant-governor elect, upon qualifying for the office, shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant-governor-elect, upon qualifying as such, shall serve as acting governor until the governor-elect qualifies for office or until the office becomes vacant." Mr. Chairman, Section 14, subsection 1.

**DELEGATE JOYCE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** I move that when this committee arise and report, after having had under consideration Section 14, subsection 1, that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** This is the last article in the Executive proposal. The majority and the minority are in agreement on it, and what we've tried to do is provide for all of the contingencies we could think of about succession. In subparagraph 1, we are providing for this provision—this period after, for illustration purposes, the November election and before the Governor takes office in January, or whenever he takes office. And we are saying, if the Governor-elect is disqualified—may be disqualified for some reason, in that it may be discovered that he is a—has been convicted of a felony or some such thing—that would be a typical disqualification. Or if he dies, which is the more likely contingency, that the Lieutenant-Governor-elect, upon qualifying for the office, he then qualifies in January as Lieutenant Governor—he then becomes Governor for the full term. But if the Governor-elect fails to assume office for any other reason—he may be sick on Inauguration Day, may be out of—for some reason or other can't appear on Inauguration Day—the Lieutenant-Governor-elect, upon qualifying for such, shall serve as acting Governor until the Governor-elect qualifies for office or until the office becomes vacant. And so we felt, then, when the Governor-elect is able to come to be sworn in as Governor, then he will become Governor, and in that intervening period the Lieutenant Governor would serve as acting Governor, and the reason that we do this is, it has been pointed out that in some states it's been held that when the Governor-elect for some reason or other doesn't take office, that the former Governor continues to hold office, and in accordance with our team concept that the Lieutenant-Governor-elect, having been elected by the people on the same team, that that Lieutenant Governor should become Governor after he is sworn in as Lieutenant Governor. That's the purpose of Section 1.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Joyce, would you yield to a question here?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Mr. Chairman, I yield.

**DELEGATE CATE:** Does this cover the situation where a Governor resigns from office, or is that—

**DELEGATE JOYCE:** Well, this subsection does not. This is before the governor-elect ever actually takes the oath so therefore never does become Governor. Resignations and so forth are provided on further in the article.

**DELEGATE CATE:** Okay. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Will the gentleman, Mr. Joyce, yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Mr. Chairman, I yield.

**DELEGATE SCHILTZ:** Mr. Joyce, I have considerable difficulty knowing what "or until the office becomes vacant" means in there. As I would read this, it says, "If the governor-elect fails to assume office for any other reason, the lieutenant governor, upon qualifying, shall serve"—and then skip all the rest of that—"or until the office becomes vacant." I don't quarrel with it much, I just don't know what it means.

**DELEGATE JOYCE:** Well, may I answer Mr. Schiltz's question by saying that I would prefer that he ask Delegate Garlington in that connection because my mind's kind of gone blank here briefly, but it'll be back. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** In Section 6 and Section 7, there are references to vacancy. Just as a little further explanation for why this is so involved. We, not only thinking of the customary conditions of death or resignation but the same kind of problem that beset the federal government when President Eisenhower had his heart attack and the question of serious physical disability first existed and then when it would be relieved and he could return to function, and we were thinking of all the things where a man who is in the Governor's office can have a heart attack, he can have a stroke, he can have a serious accident, and we were trying to cope in various ways with the necessities of the case; and in those instances where nothing is final, like death or resignation or disqualification or impeachment, you get into a kind of a vague, blurred area of when is he on and when is he off. And if he should fall victim to drugs [illegible] even have a dispute as to whether he's qualified or not. All these things are wrapped up in the considerations that are in this [illegible]

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I think that what gave occasion to my problem, Mr. Garlington, is that, as I read that, he would serve as acting Governor until the office becomes vacant, but I can read it also that he would be acting Governor if the office did become vacant, you see.

**CHAIRMAN GRAYBILL:** Mr. Schiltz, may the Chair interpose here that the trouble may be that he's in a capacity of acting Governor, and if the office became vacant—what they mean, I suppose, is if the Governor died—then he would cease being acting Governor and become regular Governor. Is that right, Mr. Garlington?

Now, if that isn't styled and drafted right, fix it up. (Laughter)

Is there any further discussion of subsection 1 of Section 14?

(No response)

**CHAIRMAN GRAYBILL:** If not, members of the committee you have heard—you now have before you upon the motion of the Chairman of the Committee on Executive that when this committee does rise and report, after having had under consideration Section 14, sub. 1, that it recommend the same be adopted. So many as are in favor of that, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted. Will the clerk please read 14, sub. 2.

**CLERK HANSON:** "Section 14, subsection 2. The lieutenant governor shall serve as acting governor when requested in writing by the governor to do so. He shall serve as acting governor during the absence from the state of the governor for any period in excess of 45 days." Mr. Chairman, subsection 2.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee shall arise and report, after having had under consideration Section 14, subsection 2, that the Executive proposed article—that the same be adopted.

**CHAIRMAN GRAYBILL:** Is there any discussion of 14, sub. 2?

Mr. Davis.

**DELEGATE DAVIS:** Most regretfully do I—

**CHAIRMAN GRAYBILL:** Oh, Mr. Joyce, I'm sorry. I thought you'd sat down.

**DELEGATE JOYCE:** I did, but I didn't mean to. However—

**CHAIRMAN GRAYBILL:** Mr. Davis, I'll come back to you.

Mr. Joyce.

**DELEGATE JOYCE:** What we've done in this section is we've provided that the Lieutenant Governor shall serve as acting Governor when requested in writing by the Governor to do so, and he shall serve as acting Governor during the absence from the state of the Governor for any period in excess of 45 days. Let me explain what we attempted to do here. We attempted to change the current system, the current provision in the Montana Constitution, which in effect says, when the Governor leaves the State of Montana he loses all his powers as Governor, and we thought in this modern day and age that that was not necessary; that the Governor should still be Governor if he goes over to Spokane or even if he goes back to Washington, because he can get in touch with his office. However, we thought that the situation may arise where the business has to be done, and there are certain things to be done if the Governor is going to be out of the state or even if he's just home sick, that he could designate his Lieutenant Governor teammate to be acting Governor by doing so in writing. And this would eliminate the problems that keep recurring about when the Governor is out of the state and he loses all his powers, and some Lieutenant Governors then undertake to make appointments and so forth and to actually exercise some of the more important functions of the Governor. But we did also attempt to provide for that remote contingency where a Governor would just take off and leave the state in excess of 45 days, and after the 46th day—we picked 45 after wrestling between 30 and 60 and arrived at the average, purely arbitrary, but sufficiently long that the Governor—if the Governor is gone that length of time, then we provided that, in effect, on the 46th day the Lieutenant Governor becomes the Governor, or the acting Governor, notwithstanding the wishes of the Governor. So that is the whole purpose of subsection 2.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. Chairman, for the record, perhaps Mr. Joyce could yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** I yield, Mr. Davis—or Mr. Chairman.

**DELEGATE DAVIS:** You mean 45 days—consecutive or successive days, rather than 45 days during his term of office, or in any year, and so forth?

**DELEGATE JOYCE:** Yes, we did. Doesn't it say that?

**DELEGATE DAVIS:** It just says "excess"—"any period in excess." It isn't clear, for the record.

**DELEGATE JOYCE:** "During the absence from the state in excess of 45 days"—in excess of 45 continuous days. I guess maybe Style and Drafting can pick that up. At any rate, that's our intent.

**CHAIRMAN GRAYBILL:** If it's you're intent, all those in favor of adding 45 consecutive days, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** All right. Now it says "45 consecutive days." Members of the committee, you have before you, on the recommendation of Mr. Joyce—

Oh, Mr. Ask, do you have some discussion?

**DELEGATE ASK:** Will Mr. Joyce yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Yes, I yield, Mr. Chairman.

**DELEGATE ASK:** Mr. Joyce, what happens if the Governor leaves the state and he doesn't request the Lieutenant Governor to act for him and he's gone for a period of time, what happens to the daily work, such as extradition papers that the Governor must sign, other duties that are day-to-day affairs—if he fails to do it or doesn't do it?

**DELEGATE JOYCE:** Well, I presume that they would just pile up if the Governor just arbitrarily refused to do so, but we've provided a method here where all he has to do is authorize the Lieutenant Governor in writing to become acting Governor and sign those extradition papers.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you on the recommendation of Mr. Joyce that when this committee does arise and report, having had under consideration Section 14, subparagraph 2, that it recommend the same be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** It's adopted. Will the clerk read subsection 3 of 14.

**CLERK HANSON:** "Subsection 3. He shall also serve as acting governor when the governor is disabled and by reason of that disability is unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor in such event shall continue to serve as acting governor until the governor resumes the duties of his office." Mr. Chairman, subsection 3.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee shall arise and report, after having had under consideration Section 14, subsection 3, of the proposed Executive Article, that it recommend the same be adopted.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, in this section we undertake to provide for that contingency about which Mr. Garlington spoke a few minutes ago; namely, where the Governor is just disabled and he can't communicate with the

Lieutenant Governor—he's had a stroke or a heart attack and he can't write anything to the Lieutenant Governor to take over—we have in that connection authorized the Lieutenant Governor, in effect, to assume the powers of acting Governor. Now, I don't see that this will create any problem at all, because if the Governor is able to function, why, he will resume his duties. And of course, in the remote contingency that the Lieutenant Governor doesn't want to give up, why, the fact is that it can be adjudicated that the Governor, once he is on his feet and has his faculties about him, is the Governor.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you, on the recommendation of Mr. Joyce that when this committee does arise and report, after having under consideration Section 14, sub. 3, that it recommend the same do pass. So many as shall be in favor of that, please say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Will the clerk please read sub. 4.

**CLERK HANSON:** "Subsection 4, Section 14. Whenever the lieutenant governor and attorney general transmit to the presiding officer of the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene." Mr. Chairman, subsection 4.

**DELEGATE JOYCE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee shall arise and report, after having under consideration Section 14, subsection 4 of the proposed Executive Article, that it recommend that the same be adopted. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** In subsection 4, we provided that when the Lieutenant Governor and the Attorney General transmit to the presiding officers of the Legislature their written declaration that the Governor is unable to discharge the powers and duties of his office, that the Legislature shall then convene. Now, we're drawing a parallel here between—the recently adopted 25th Amendment to the federal Constitution. That amendment provides that when the Vice President and the principal cabinet officers certify in writing to the majority leaders of the Senate and the Speaker of the House that the President is unable to perform his duties, why, then that in effect vests the Congress of the United States with jurisdiction to look into this matter. And so, this would be the—would cover the case where the Governor became insane and—so, rather than having any principal cabinet officers, we have provided that the Lieutenant Governor and the Attorney General both would transmit this to the presiding officer of the Legislature and that the Legislature would then immediately convene. And the thinking there was that the Lieutenant Governor, being a teammate, would not do it unless the Governor really was insane, but by adding the Attorney General on with him, then they both have to concur, why, that would then take care of the case where, in fact, he was insane. So that is the purpose of subsection 4, and we're—at this point the Legislature just convenes and then we will go on and tell what the Legislature does in the next subsections.

**DELEGATE ESKILDSEN:** Would Mr. Joyce yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Mr. President, I yield.

**DELEGATE ESKILDSEN:** When, in a bicameral Legislature, who would be the presiding officer of the Legislature?

**DELEGATE JOYCE:** In a bicameral, I presume that the Speaker of the House and whoever the Senate may elect as its presiding officer, since in the Legislative Article we have removed the Lieutenant Governor as the presiding officer of the Senate. So I don't know what they would call—in a bicameral Legislature, they'd probably call him President of the Senate or whatever name they may pick out for him.

**DELEGATE ESKILDSEN:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** One other question. To the presiding officer of the Legislature—and I can see that we have two presiding officers. We have a Speaker of the House and we have something else in the Senate. You'd have to pick one to be the presiding officer, where it would be officers if it was a bicameral. I just want to get this straight as to who they're going to send it to.

**DELEGATE JOYCE:** Well, the intention of the committee is that they would send it—if it's a bicameral, that they would communicate to both the Speaker of the House and whoever the top officer of the Senate was, and if it was unicameral, that it would be to whoever then was the top senator or whatever they called him in the unicameral system; and we thought that perhaps Style and Drafting could adjust that, depending on what happens to the unicameral and bicameral proposals after it goes through Style and Drafting.

**CHAIRMAN GRAYBILL:** Very well. Members of the committee, you have before you on the recommendation of Mr. Joyce that when this committee does arise and report, after having had under consideration Section 14, sub. 5, that it recommend the same do pass. All in favor of that, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Will the clerk read subsection 5.

**CLERK HANSON:** "Subsection 5. If the legislature, within 20 days after convening, determines by two-thirds vote of its members present that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall enter upon the discharge the same as acting governor; thereafter, when the governor transmits to the presiding officer of the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to discharge the powers and duties of the office as acting governor." Mr. Chairman, subsection 5.

**DELEGATE JOYCE:** I move that when this committee does arise and report, after having had under consideration Section 14, subsection 5, that it recommend that the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** In this section, we provide that if the Legislature—and, again, it's bicameral or unicameral—within 21 days after convening determine by two-thirds vote of its members present that the Governor is unable to discharge his duties, then the Lieutenant Governor shall enter upon and discharge those duties as acting Governor. This is the case where the Governor presumably is insane, and the Legislature would have 21 days to convene—to decide that, and then it would take a two-thirds vote of the Legislature to adjudicate in effect that the Governor was unable to discharge his duties and the Governor—and then the Lieutenant Governor would become the acting Governor only, however. Thereafter, when the Governor sends a—transmits to the presiding officer of the Legislature his written declaration that the—no inability exists, he resumes the powers and duties of his office within 15 days unless the Legislature determine otherwise by a two-thirds vote. This takes care of that contingency where the Governor thinks he's sane and the Legislature thinks he isn't and—prior to this it's been initiated by both the Lieutenant Governor and the Attorney General and it's before the Legislature and they have determined by two-thirds vote that he's not fit to discharge his duties, then the Lieutenant Governor becomes acting Governor. But then, all he has to do after that, then, is send a written request to the Legislature that he's been cured and that he can resume the powers and duties of his office. And if there is some dispute as to whether or not he might be cured, the Legislature would have 15 days to adjudicate that matter. Presumably he would, in fact, be cured and the Legislature wouldn't really meet; and this parallels the 25th Amendment, and it allows the President who is just temporarily mentally or otherwise physically deranged some way and to—when he recovers, to claim his office, and it makes it very difficult for anyone to actually railroad the Governor out of office. Then, the last sentence is, if the Legislature does determine, however, that he's still disabled, notwithstanding his protestations to the contrary, that the Lieutenant Governor shall continue to discharge the powers and duties of the office as acting Governor.

**CHAIRMAN GRAYBILL:** Very well. Members of the committee, you have before you, on the recommendation of Mr. Joyce, that when this body does arise and report, after having under consideration Section 14, subsection 5, that it recommend the same be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it. Would clerk read subsection 6.

**CLERK HANSON:** "Subsection 6. If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term." Mr. Chairman, subsection 6.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 14, subsection 6, of the Executive Article, that it recommend the same be adopted. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** In this section we now provide that when the Governor—the office of Governor becomes vacant by reason of death—'course it will be pretty clearly vacant in that contingency—or resignation or disqualification, then the Lieutenant Governor shall become Governor for the remainder of the term. Now, of course, the fact that we've got resignation in there doesn't conflict with President Graybill's amendment, I don't think, because if the Lieutenant Governor—maybe it does—but the Lieutenant Governor becomes Governor for the remainder of the term. I suppose I should ask Delegate—Mr. President, in his capacity as Delegate Graybill, if he thinks it does conflict with this previous amendment.

**CHAIRMAN GRAYBILL:** I thought you could correct that by putting a comma after "term" and say, "except as otherwise provided herein" or "elsewhere provided herein"—"except as otherwise provided herein."

**DELEGATE JOYCE:** That would be satisfactory with me, I think. I'll so move that it be amended.

**CHAIRMAN GRAYBILL:** If we put that in, that might be enough to get it to Style and Drafting. The motion is to add to line 12 on page 11, if you're following on that page, to subsection 6, the words: "comma except as otherwise provided herein"—the idea being to encompass the amendment we made right after lunch about the Lieutenant Governor not being able to succeed if he's appointed. Is there discussion?
(No response)

**CHAIRMAN GRAYBILL:** So many as shall be in favor of that amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Now, the question is on subsection 6 itself, as amended. Members of the committee you have before you, on the recommendation of Mr. Joyce that when this committee does rise and report, after having under consideration Section 14, subsection 6, that it recommend the same shall be adopted. All those in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted as amended. The Ayes have it. Will the clerk read subsection 7.

**CLERK HANSON:** "Subsection 7. Additional succession to such vacancies shall be as provided by law." Mr. Chairman, subsection 7.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Section 14, subsection 7, of the Executive Article, that it recommend that the same be adopted.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** In Section 7, we attempted to provide for additional succession to such vacancies shall be as provided by law, and in that connection we had in mind that the Legislature would provide for these additional vacancies—if both of them got killed in a common disaster—that it provide by law who might do it. I suspect that maybe, in view of our amendment, we ought to say "as provided herein or by law."

**CHAIRMAN GRAYBILL:** Let's leave that one to Style and Drafting, Mr. Joyce.

**DELEGATE JOYCE:** All right. I'll move it adopt—as is, then. I move the adoption.

**CHAIRMAN GRAYBILL:** Is there discussion on subsection 7?
(No response)

**CHAIRMAN GRAYBILL:** All in favor of Mr. Joyce's motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted. Will the clerk read subsection 8.

**CLERK HANSON:** "Subsection 8. When there is a vacancy in the office of the governor, the successor shall have the title, powers, duties and emoluments of that office and shall be governor. When the successor serves as acting governor for a temporary period, he shall have only the powers and duties of the office for the period during which he serves as such." Mr. Chairman, subsection 8.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee shall arise and report, after having had under consideration Section 14, subsection 8, of the Executive proposal, that it recommend that the same be adopted.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** In this last paragraph, paralleling again the 25th Amendment, we provide that wherever there is a vacancy in the office of Governor, it has become and declared vacant, either because of his death or it's just any other contingency, his successor then will have the title, powers, duties and emoluments of that office and shall be the Governor. And this settles the problem as to whether or not he's really Lieutenant Governor acting as Governor. When the office is, in fact, vacant, the new man is the Governor. In Section 2—or second sentence, I should say, when the successor serves as an acting Governor for a temporary period, as we're provided for herein, he shall have only the powers and the duties of the office for the period which he serves as such acting Governor. And this would clear up the ambiguity that currently exists about the current Constitution of when the Governor dies, what is that Lieutenant Governor then during the remainder of the term.

**CHAIRMAN GRAYBILL:** Is there discussion of subsection 8?
(No response)

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you, on the motion of Mr. Joyce that when this committee does arise and report, that it recommend that subsection 8 of Section 14 be adopted. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.
(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted. Mr. Mahoney has a new section to add. Mr. Mahoney, may the clerk read your proposed Section 15?

**DELEGATE MAHONEY:** Please, Mr. President.

**CLERK HANSON:** "Proposed Section 16 from Article VII, Section 10, of the present Constitution, on page 17—"

**CHAIRMAN GRAYBILL:** Now the reference is to the old Constitution, right—or the present Constitution.

**CLERK HANSON:** Right.

**CHAIRMAN GRAYBILL:** Mr. Clerk, I think this will be Number 15, since 14 is the last one we had.

**CLERK HANSON:** Okay. "Section 15. The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required. He may also require information in writing at any time, under oath, from all officers and managers of state institutions upon any subject relating to the condition, management and expenses of their respective offices and institutions and may, at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office of the state institution—" Mr. Chairman—

**CHAIRMAN GRAYBILL:** —office or state institution."

**CLERK HANSON:** "...office or state institution." Mr. Chairman, proposed Section 15.

**CHAIRMAN GRAYBILL:** Very well. Mr. Mahoney has an amendment which will add a new section which amounts to adding Article—or adding Section 10 from Article VII of the existing Constitution.

Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President, all I'm doing is taking—as you stated, this is on page 17 of your yellow books—and I'm just taking the top part out, allowing the Governor to have a committee to investigate or to request information, and I think this should be in the Constitution. Sometimes when these people get confirmed and they think they're on their own, I like to let the Governor have a little chance to call the boys in or to talk to them or send a report to him, and this is what I'm trying to add back in the Constitution.

**CHAIRMAN GRAYBILL:** Is there discussion? I'll be glad to read it again: "The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required. He may also require information in writing at any time, under oath, from all officers and managers of state institutions upon any subject relating to the condition, management and expenses of their respective offices and institutions and may, at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution." This is just of the present Constitution. Is there discussion?

**DELEGATE REICHERT:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Would Mr. Joyce yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Mr. Chairman, I yield.

**DELEGATE REICHERT:** Mr. Joyce, during the deliberation of your Executive Committee, did you discuss this, and would you please give us your reasons for the deletion?

**DELEGATE JOYCE:** Well, I think, Mrs. Reichert, the reason we did think that we had covered the Executive Article and we thought this was covered in the executive power that we gave to the Governor and his powers under the reorganization that all these people are appointed by him, but I suspect on reflection here that perhaps Mr. Mahoney is correct. If the Legislature does set up some head of one of these executive boards and gives him a firm term where the Governor can't get rid of him, that he perhaps should have this authority, and so, on the off chance that we haven't adequately covered it, I'm going to accede to Mr. Mahoney's amendment unless I hear some objection from other members of the Executive Committee.

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you, on the motion of Mr. Mahoney that when this committee does arise and report, after having had under consideration proposed Section 15, a new section added by his amendment, that it recommend the same shall be adopted. So many as are in favor of that, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it; it's adopted. Mr. Felt has a proposed additional amendment, which we'll style Section 16. Mr. Felt, may we read the proposal from the rostrum?

**DELEGATE FELT:** Please.

**CHAIRMAN GRAYBILL:** Will the clerk please read Mr. Felt's proposal.

**CLERK HANSON:** "Mr. Chairman. I move to amend the Executive Committee proposal by adding an additional section thereto as follows: 'Section 16. The legislature shall appoint a legislative post-auditor, who shall conduct post-audits of financial transactions and accounts for the state and of all branches, departments, offices, boards, commissions, agencies, authorities, and institutions of the state, established by this Constitution or by law, and performance post-audits thereof. The appointment may be made through a legislative audit committee as provided by the legislature.' Signed: Felt."

**CHAIRMAN GRAYBILL:** Mr. Felt, the Chair is in doubt as to whether or not to allow this, the Legislative Committee having been—report having been completed and this not being a part of it, it seems to the Chair that it's a part—it should normally be a part of the Legislative Article.

**DELEGATE FELT:** Mr. Chairman—

**CHAIRMAN GRAYBILL:** Is it your purpose—would you explain your purpose in making it, at this time, to the Chair.

**DELEGATE FELT:** That was my intention, Mr. Chairman, to begin by dealing with that question because it is a legitimate question and I believe the answer rests in the discussion we had this morning on the matter of external auditing, which did come up as a part of our Executive proposal and was not accepted. And that the—I would agree that this matter does probably belong in the Legislative Article, although there were some who spoke, saying that it belonged in the Article on Revenue and Taxation, and if this matter is acceptable in principle to the members of the Convention, I am assured by our Committee on Style and Drafting, or by the Chairman of the committee, that it would be possible for them to deal with the matter of placing it in the proper place as selected by the Convention and after consideration of that matter by that committee. The general sense of the comments made by those who arose in opposition to having an elected Auditor who would do our external auditing was that it is being so admirably handled now by the Legislative post-auditor, that it would be better to continue with this that we have. And while I do not fully agree, I can see the point that they make, and at a minimum, I urge that we do constitutionalize the function of an external audit. As I attempted to point out—but, of course, we are told here that we can't be too hasty—but remember that we don't have time, so hurry along—I perhaps did not make things entirely clear. I have also been informed now that some of the members have not received the written copy of the proposal, although it was supposed to have been on your desks yesterday. At any event the—

**CHAIRMAN GRAYBILL:** Mr. Felt, whenever you can, stop a minute. I want to discuss the matter.

**DELEGATE FELT:** Yes.

**CHAIRMAN GRAYBILL:** May I stop you now?

**DELEGATE FELT:** I believe this is as good a time as any, Mr. Chairman.

**CHAIRMAN GRAYBILL:** All right. Now, your proposal puts the Chair in a position where he does not know precisely what to do. The proposal is clearly Legislative in nature; it's talking about a Legislative post-audit—the Legislature shall do this and the appointment shall be made through a Legislative Committee. I'm aware that we discussed the audit function this morning, and I'm aware that the Legislative post-auditor might be a good thing to add to the Legislative Committee. The problem that the Chair has, for the benefit of the body, is that the other way to do this is to move this body to reconsider the Legislative Article. If we allow Mr. Felt to interpose his amendment as an Executive amendment and place in the hands of Style and Drafting—the problem of moving it to the Legislative if we want to—we have then allowed Mr. Felt to amend the Legislative Article without reconsideration. Now, I don't mind doing that, but I think that then opens the door for anybody to reconsider anything from any other article by tacking it on Local Government, if necessary, at the end, or General Government, and amending. Now, I don't know whether we want to do that or not. Therefore, the Chair is going to put to this body the question of whether we should allow this amendment as an Executive matter or whether we should ask Mr. Felt to prepare a motion to reconsider the Legislative Article, which he could do and he could get it considered tomorrow or any time, and then you'd have an opportunity to decide whether to reconsider. Therefore, the Chair will rule that this is—well, let's see, the Chair would ask the floor manager to make a motion that—one way or the other—and then we'll have the sense of the body.

**DELEGATE ESKILDSEN:** Before I make any motion, I think that this matter should—I think that Mr. Felt, on another day should move that the Legislative proposal be taken from Style and Drafting and rereferred to the Committee of the Whole and, at that time, add this on the Committee of the Whole to the Legislative

Article, and if it passes, send it back. If the delegation doesn't want to do that, then you'd naturally just lose it there, but I don't think that it should be added to the Executive Article at this time. Now, that's my feeling.

**CHAIRMAN GRAYBILL:** Therefore, the Chair is going to adopt as the Chair's motion Mr. Eskildsen's statement. Now, if you sustain the motion, then we'll have him do it the other way; if you vote against the motion, we'll let him do it now. So many as shall be in favor of—

All right, Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, before you do that, would you reread Mr. Felt's proposal?

**CHAIRMAN GRAYBILL:** Right, I'll reread it. "Section 16. The legislature shall appoint a legislative post-auditor, who shall conduct post-audits of financial transactions and accounts for the state and of all branches, departments, offices, boards, commissions, agencies, authorities, and institutions of the state, established by this Constitution or by law, and perform post-audits thereof. The appointment may be made through a legislative audit committee as provided by the legislature." Now, the question, then, is whether to ask Mr. Felt to come in tomorrow with a motion to bring the Legislative Article back from Style and Drafting to consider this—in other words, to reconsider the Legislative Article—or whether to let it go on as a part of Executive, and we can certainly do that and let Style and Drafting place it. The point is that we then open the door, more widely at least, for anyone to amend.

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I would have to question whether a motion to reconsider can be brought or made after the committee has finally risen and reported. Now, according to Rule 27, a motion to reconsider shall be in order in the Committee of the Whole by a majority vote of those present and voting before the committee shall rise and finally report.

**CHAIRMAN GRAYBILL:** That's right in Committee of the Whole, but it is possible, I think, to have a motion to reconsider in the Convention. Isn't that right, Mr. Eskildsen?

**DELEGATE ESKILDSEN:** Well, you don't reconsider it, you just make the motion to take it from Style and Drafting and refer it to the Committee of the Whole. Mr. Felt, at another setting and the proper time when motions and resolutions, can move that we take the Article on Legislative, the proposal on legislation from Style and Drafting and refer it to the Committee of the Whole. And if we adopt that motion at that time, why, then it'll be on Committee of the Whole; and when we go into the Committee of the Whole, then Mr. Felt can add this to the Committee of the Whole proposal. And this is the way I feel it should be done properly. Now, you can do it any way you want to.

**DELEGATE CHAMPOUX:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Champoux.

I'll get back to you, Mr. Felt.

**DELEGATE CHAMPOUX:** Just on a point of information, if I may, sir, is it within the province of this body to limit the reconsideration just to this one particular item, if we do decide to reconsider?

**CHAIRMAN GRAYBILL:** I would think that would depend on Mr. Felt's motion, but if he wanted to bring back some part of it, I suppose it could be done.

Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman, I notice on my desk is a report of the General Government Committee and the note on the report—the scope of an area such as General Government is broad and somewhat nebulous, and I'm wondering, this article that's on my desk—I just glanced at it—it hasn't been heard yet. It's the report of that committee. It takes up the separation of powers, it takes up quite a number of other items, and that might be a good place for the motion to be made, and we don't have to reconsider anything, or we wouldn't have to worry about it being in its improper place, and I'm offering this just as a suggestion to the management of the Convention.

**CHAIRMAN GRAYBILL:** I think that's a good possibility, Mr. Aronow. The Chair would have some problem in General Government, too. The proposal is quite closely connected with the Legislature, and all I'm suggesting is that if we don't follow the usual procedures, then anything can be put into any article and then the Style and Drafting can move it around and that would mean that we could, you know, put anything anywhere, which would open up the thing pretty wide for amendments on new material. And I'm afraid if we do that, we'll be getting new material on the Legislative and the Executive and the Judicial all through Natural Resources and Public Health.

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, as a point of order, I refer you to Rule 66 which says, "On reconsideration any delegate who voted on the prevailing side may move for a reconsideration at the same session day of the Convention or may give notice that he will make such a motion not later than the next succeeding session day. I don't think Mr. Felt would be allowed, under the rules, to move for reconsideration.

**CHAIRMAN GRAYBILL:** I think you're probably right. I think my initial idea of a motion to reconsider is out, but I don't think Mr. Eskildsen's method is out, which I think this Convention has a right at any time to take things from committees and put them on or off General Orders, and I think there's a rule to that effect which I haven't looked up.

Mr. Champoux.

**DELEGATE CHAMPOUX:** I don't think I've really satisfied myself in asking—in getting the information I want. Now, what's bothering me is this. If we bring this back for reconsideration—see this is—how this question is answered will determine how I'm going to vote on this—if we bring this back for consideration and we're going to be allowed to open up that whole article for reconsideration just to go—discuss Mr. Felt's proposition, this may create dangers. I see this as a kind of a ploy in the future. I may want to use it myself. But at least, I want to know the ground rules. But if—what I'm asking is, if we—when we reconsider, Mr. Eskildsen, can we limit it to one item only? That's my question.

**DELEGATE ESKILDSEN:** Well, when we bring the article back, when you take it from Style and Drafting and refer it back to the Committee of the Whole, at that time we'll have the whole Legislative Article before us. Now, what we do then is up to this body.

**CHAIRMAN GRAYBILL:** Mr. Felt's been on his feet quite awhile, Mr. Berg.

**DELEGATE FELT:** Mr. Chairman, I do not feel that the Chair is in error in taking the position it has taken of referring this to the Convention or by motion of Mr. Eskildsen or in any other way. I did this method originally because I thought it might save time, but if we're going to discuss all of our rules of parliamentary procedure at the same time, then we aren't going to save time. I can assure you I had offers of motions to reconsider, which I felt would take up so much additional time and would be unnecessary since the sense of the present proposal is to depart from the original position but yet remain on the subject, which is germane of external auditing, and I felt, while the question was properly raised by the Chair, that if a matter is germane to the subject already discussed within the article as it was originally proposed, and which I probably could handle by amendments, but it would—you'd end up with the same problem, then I was not using this, then, as a subterfuge to bring up something which I could not bring up in some other way. I realize there are alternative methods. I tried to find the one that I thought went most directly, immediately to the question, and particularly because there seemed to be such overwhelming support for this idea, and I thought it might save time. But I'm content with the ruling of the Chair and would abide by the decision of the body if they choose not to handle it in this manner; I certainly don't want to waste time. I'm trying to save time by using it.

**CHAIRMAN GRAYBILL:** Mr. Felt, I find no difficulty with the—I think it's possibly a good thing to debate and discuss, and that isn't what bothers me. It bothers me that it seems to be purely Legislative, and the only thing that really bothers me is that if we allow this to happen very often, I think we have opened up every article to amendment of new matter for other articles. The Chair is going to withdraw the motion I made, and I'm going to replace it with a motion that's been—that I believe should be put because of some of the questions that have been asked from the floor. I'd like to ask the body to refer this matter to Rules Committee—let them come up with a solution. Is there discussion of that motion?

(No response)

**CHAIRMAN GRAYBILL:** Very well. All in favor of the motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** Very well, the matter is referred to the Rules Committee, Mr. Felt, and the Rules Committee can meet on it as soon as practicable and come up with a solution. Now, ladies and gentlemen, we have before us no other new matter. But we have before us two motions to reconsider, but they're both to reconsider the same section. At least, they're both to reconsider Section 3, although they may be to reconsider different subsections of 3. Section 3 on qualifications has two subsections, 1 and 2. Mr. Davis, your motion only goes to 1. And Mr. Habedank, your motion goes to adding a third subsection. The Chair would entertain a motion from Mr. Davis to reconsider subsection 3. Would you mind opening the whole of Section 3, and then we won't have to do it twice, Mr. Davis?

**DELEGATE DAVIS:** Yes, Mr. President, having voted on the prevailing side on Section 3, subsection 1—well, then, the whole section—I move that we reconsider the action we took yesterday and move this body to reconsider the same.

**CHAIRMAN GRAYBILL:** Now, Mr. Davis, in your motion to the Chair you put very briefly the reasons that you did this. I'd like to read those and I'd like to read the reasons that Mr. Habedank moves, and then I'd like to ask the body to consider the reasons and avoid debating them if possible. Mr. Davis' reasons are: qualifications of Governor, Lieutenant Governor, Superintendent of Public Instruction, State Treasurer, State Auditor and Secretary of State. In other words, qualifications. Mr. Habedank's reason is to add a subparagraph concerning qualifications of the Superintendent of Public Instruction. Now, they want to reconsider Section 3 so that they may bring up matter concerning qualifications of those various officers. The Chair has entertained Mr. Davis' motion.

Mr. Davis.

**DELEGATE DAVIS:** Mr. President, may I speak to it very briefly? Specifically, I am moving to amend the qualification as to age that I voted on, the age of 18, and move it to 25, the minority proposal. Last evening the hour got late, a lot of [illegible] were present. We wanted to support the majority who—on the majority was the most able representatives, Mr. Garlington, Mr. Martin, Mr. Joyce, Mr. Roeder and many others—and I think that in considering that, in wanting to support Mr. Garlington, after reviewing his article last night and on what he thought should be the way you approach these subjects and consider them, I took his heed and must oppose that majority today and think it should be reconsidered. I'm afraid we're—may lose a lot of very important articles and very important amendments we've made in this Constitution by lowering this age limit. I amended it last night as a compromise from 30 to 25; I moved over to prevailing side so I could reconsider it today when we're not near as tired, although I'm sorry it is at the end of the day this question's coming up again. So, I most respectfully request your support that we can reconsider this matter to help our overall constitutional document that we're going to put out here. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** Are we open to debate on this?

**CHAIRMAN GRAYBILL:** You're not open to debate the issue. You're open to debate whether or not to reconsider, and I'm holding a heavy gavel.

Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. Chairman, would it be possible to pass this until tomorrow in the Committee of the Whole?

**CHAIRMAN GRAYBILL:** I am going to try and finish the Executive Article tonight. I'm not going to try to work tonight; I'm going to try and finish it tonight. That means in the next half hour. Very well. All in favor of the motion to reconsider, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered.

**UNIDENTIFIED DELEGATE:** Division.

**CHAIRMAN GRAYBILL:** Well, if you want to stand and make a motion for a division, do so; otherwise, the Chair is not at all in doubt. Okay, Mr.—do you want a motion for division? It's not a roll call vote, however.

All those in favor, vote Aye; those opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** 69 having voted Aye, 17 No, the Chair is sustained.

The Chair will recognize Mr. Davis to discuss his proposal.

**DELEGATE DAVIS:** Mr. Chairman, I would move this body to reconsider their action taken on the majority report, Section 3, subsection 1, and to adopt the minority report, Section 3, subsection 1, wherein these officers should be 25 years of age. In other words, the whole—as the 25-year age matter was amended last evening.

**CHAIRMAN GRAYBILL:** Mr. Davis, does that include 25 for the Governor, too, there?

**DELEGATE DAVIS:** Yes, sir, 25—a substitution of 25 for 30, and then the rest would be identical.

**CHAIRMAN GRAYBILL:** Very well, Mr. Davis.

**DELEGATE DAVIS:** I won't pursue this very long. We discussed it at some length yesterday, but it seems to me, in trying to look at this overall document, some people want a shot in Education, some in Legislative, some in many other fields, and to get any of these things we've got to be responsible in this area. It adds a little dignity to the office. I'm not concerned that anyone is going to be elected under that age. What I am concerned with—it's going to be so misunderstood and misleading that it's going to hurt the things that you're really concerned with in this Constitution. In reviewing what we've done to date, it seems like we've been very responsible, despite what you read in the press. This Constitution that's been written to date is very acceptable and very credible and a great improvement, and the Legislative Article is the breakthrough of the whole thing and I think we need to keep it a good article and follow up with our qualifications here. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Jacobsen.

**DELEGATE JACOBSEN:** Mr. President, I concur with Mr. Davis. I talked to several young people at the motel last evening and this morning and asked them what they thought about 18-year-olds—the possibility of them becoming Governor. Just supposing I decided to run for Governor and picked out a young genius at 18, 19 years old, whose father had a lot of money, as a running mate and he ran us for Governor and I had a heart attack and this youngster of 19 became our Governor. Now, I don't think we want this to happen. And I think that age 25 is low enough age, and I don't think the young people are going to respect us if we don't put this age in here. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman, I listened with awe at the eloquent appeals last evening as to why 18-year-olds should be allowed to run for the office of Governor, because if they were good enough to be elected they were good enough to serve. At the same time, it was pointed out very capably that there is practically no likelihood an 18-year-old can run for Governor. Since this was passed last night, I have been in communication with different study groups in the eastern end of Montana, and without contradiction they are opposed and appalled at the fact that we were willing to allow an 18-year-old to be Governor, even though there was little likelihood of it. I would call to your attention that, in trying to placate the 18-year-olds, if they are against this new Constitution, their alternative is to vote for the old one, when they would not have any opportunity to be Governor. But in the process of being so generous and allowing the 18-year-olds to be Governor when there is little likelihood of it, we secure votes of a great many people who are antagonistic to this; we have lost a vote for the Constitution from a group that will be able to vote on the question, and at this time the 18-year-olds probably wouldn't be able to vote for it. I urge you to reconsider and to accept the compromise of 25 years.

**DELEGATE HARPER:** Mr. Chairman, I think we discussed this adequately. There always is a tendency to say when we—those who oppose a majority decision that, of course, it was done in a fit of emotion. Several times today—and this has bothered me—people have made little remarks, now we've made it possible for 18-year-olds to become Governor. Why don't we say, now we have made it possible for a 99-year-old man to be Governor? We have, you know. We've set no limits at all. It's much more possible that the man with money is going to be 95 than 18, and we haven't set any kind of upper limits. Now, let's be honest and fair about it. We are not really thinking about qualifications for the office of Governor. We are not dealing with an upper limit. We have much more [illegible] too old and decrepit, man or woman, and not able really to handle this office than we do from a person 18. I still think that we're just hung up on this idea and we're just showing our age.

**CHAIRMAN GRAYBILL:** Mr. Ask.

**DELEGATE ASK:** Mr. Chairman, I rise in support of Mr. Davis' motion on the age qualifications for Governor and the other offices. To me, not putting an age in here—I think we downgraded these offices from our previous Constitution, and here we are passing Executive Article today giving the Governor and these offices more powers, and I think we've downgraded it by lowering the age. Now, I agree that age is not the magic thing and that there are many that are probably 21 that have far more mature ideas and ability than someone that's much older. But, at least by the time they get to 25 they have proven that they have the ability and the maturity and responsibility to take that office. At 18 there's no proof of it. They have never done anything. They're just out of high school. So I submit that by the age 25, in lower levels of government, they have proven their fitness, and I think this qualification—if they met this qualification of age and proven their ability, I'm sure they'll get elected. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I am, as Charley Mahoney says, worried that we are, if we reverse our action of last night, insulting the intelligence of the Montana electorate by telling them that overnight we have decided that they are so stupid that we can't trust them and therefore we've got to stick a 25-year limit on this, because otherwise they're going to go out and elect an 18-year-old Governor. Another thing that worries me is that we are going to appear sort of foolish to the people of Montana, like a flock of chickens that have seen the shadow of a hawk pass over and suddenly run for cover. Now, I don't like to be in that position myself.

**CHAIRMAN GRAYBILL:** Now, if you have something to add that wasn't said last night and you think it's important, I want you to stand and talk on it. But if you don't, if you're just going to talk about it again, let's remember what we said last night.

Mrs. Erdmann.

**DELEGATE ERDMANN:** Mr. Chairman, I think I do have one extra new thought. I agree with Delegate Harper. I believe we are showing our age, and it's that uncertain age of middle age who are—where they are so desperately trying to identify with youth. We live in a country of youth worshipers, and we aren't fooling these young people at all. We are simply cheapening the top offices of our state, I believe, and these youngsters know that they can't use this 18-year-old privilege of running for Governor, but they're smart enough to know that they're going to be used both by the politicians and by the lobbyists, and I think we would win the support—not only the support of the 18-year-olds but also their respect if we go ahead and act our age and try to write a responsible Constitution. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Campbell.

**DELEGATE CAMPBELL:** Mr. Chairman, fellow delegates. I oppose very much the motion to reconsider our action of last night which, on a vote of 59 to 31, would give Montana the first state to recognize the challenge of the younger generation. I think we should consider the Constitutional Convention of 1889, in which the challenge of their day was whether or not to give the Legislature the right to give women the right to vote in the future. Now, this was a challenge presented to them. The arguments were the same in their day—women are not intelligent enough, they're not experienced enough, they're not qualified enough to vote. They argued this from all counties of the state in many of the same areas that you represent today. The delegate from Lewistown said that the ballot would be an effective way for women to protect their home or children and their person because it would allow her to say, "I can vote, and I will cast my vote for an officer that will enforce the laws that protect me." Now, young people today do have the right to vote with the 26th Amendment. We are one of the two constitutional conventions meeting after that historic 26th Amendment to the United States Constitution. The Deer Lodge delegate opposed giving women the right to vote because it would, in his words, be the entering wedge which would bring about their downfall. A man would not be eager to lead his wife to the polls if he knew that she would vote a different ballot. As long as a woman obeys the man and votes as he does, he is glad to take her to the polls, but the instant she refuses to be governed in that vote, there will be dissention that will cause diversion and that will cause downfall of woman instead of her elevation. They pointed out that, only recently, in 1889, had the first college allowed coeducation, and here's how they described it in 1889 in this same Convention: "A howl of indignation and horror went up from one end of the land to the other at the shocking spectacle of a young lady sitting side-by-side with a young man, trying to gain a liberal education." Humorous to us now. And the man from Silver Bow County, who said, "I believe that women have the best of the question as it is, and I'm thoroughly satisfied that I am not occupying an ungallant position when I say that I am willing to let them have the better of the question and I am not willing to impose upon them the responsibilities of suffrage." Many of the same arguments; we're not willing to impose upon young people the responsibilities. It was argued last night, we've given young people everything; what more can we give them? We can give them one thing—we can give them responsibility; and responsibility is what's going to produce the best of our younger generation. Our Bill of Rights Committee has unanimously endorsed a provision which would allow 18-year-olds full adult privileges, including the right to hold any public office in the state. As I said in my opening statement, the objections in the past to women having the right to vote and to enter into the system, much like the objections of today, reflect a basic lack of confidence by those who fear that the democratic process is not capable of accepting a new group of responsible citizens. There is no basis for the doubts of the past, nor is there any basis for the doubts of today. I honestly feel that last night's decision was an overwhelming support and a vote of confidence towards the young people of this state. I think now, if we are to panic in the face of some lobbyists who have stated in the press that their pet projects are not receiving the attention that they perceive—that they feel some wave of indignation around the state, which I don't feel exist, I don't feel that we should lose the intestinal fortitude to stand by what we feel is right for this state. We won't have to worry about selling something, because this proposed Constitution is not for sale to the people of Montana; it's going to be put up for adoption. This is our child. We must do the very best we can with it. I think that this is not going to be such a revolutionary thing to upset the people of Montana. I think the more they think about it, the more they'll accept it. I think we made the right decision, and I strongly oppose the attempt to change our decision of last night. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. President, is an amendment to Mr. Davis' motion in order at this time?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE ROBINSON:** I do not have it written down but it isn't very long. On page—I'm on page 48, line 10, after "his"—after the words "his election", insert the phrase "nor more than 55 years at the time of his election."

**CHAIRMAN GRAYBILL:** The Chair is encouraged that you'd put that motion to me. (Laughter) Mrs. Robinson wants to amend line 10 to say that they can be—have to be 25 and not more than 55.

Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. President, members of this Convention. I'm a little bit concerned of exactly what we are trying to do in setting up these qualifications. If we decide at age 25 someone is automatically anointed and is able to serve as Governor of the state, then there must be a similar time when somebody is unanointed. There must be a time, a chronological time, that a person loses his effectiveness or loses touch with reality. Now, I will submit that the majority of the people of the United States are under the age 55. This is, I think, by limiting it at 55, you probably see how ridiculous it is to limit it at age 25, but nevertheless, if there are these chronological differences, I think we'd better decide what kind of people we want serving in Montana. It seems to me if we were limited to the age 55 in this Convention, that there would be several people that would not be here. (Laughter) At least, I think many of these people would be very qualified individuals, but it seems to me that by the proposed amendment of Mr. Davis, we are no longer considering individuals, we're not considering anything on individual qualification nor merit. What we are considering on is some arbitrary age that you have decided to impose upon everyone. I suggest that if we're going to have a lower limit, we'd better have a higher limit. It seems to me that if you are really interested in getting qualified people to these offices, you should think about imposing some other qualifications. I would suggest that if you want someone really qualified for Governor, you might write in that they shall have a college education or a minimum I.Q. of 150 or [illegible] experience in public administration. I [illegible] what you're talking about—experience, qualifications? You're not talking about age.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mrs. Robinson's motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it; however, we will take a division, but we will not take a roll call. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** 68 having sustained the Chair and 25 having voted Aye, the motion did not pass. All right, we're back on Mr. Davis' amendment, which is to put in the minority report.

Mr. Harper—Oh, Mr. Harbaugh, pardon me.

**DELEGATE HARBAUGH:** I didn't speak on this issue last night. I constrained myself, but I think that the amendment which we just defeated helped to pinpoint the problem. And the real question is not the question of age, and I think both sides agree to this, that the real question is fear of the electorate. We are afraid of what people will think about this. And I will say again, as I said yesterday, let's dare to be courageous; let's dare to do what is right; and let's defeat this proposed amendment.

**CHAIRMAN GRAYBILL:** Mr. Belcher.

**DELEGATE BELCHER:** One little thing, Mr. Chairman, that I would like to add to this. The majority of the insurance companies of the United States, in driving autos, feel that the responsible people—not necessarily responsible, I shouldn't word it that way—but people mature at age 25 as far as driving is concerned. If we are going to let people under 25 run our government, I think we are making a big mistake.

**CHAIRMAN GRAYBILL:** Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. Chairman, in the essence of keeping this short, I would like to say that I think this is a disgrace and a mockery of this Convention, and I believe that the people that sent me here wanted me to use a little common sense. Therefore, I support Mr. Davis' motion.

**CHAIRMAN GRAYBILL:** Mr. Monroe.

**DELEGATE MONROE:** Mr. President, I'd like to use a little common sense and involve a lot of our—a lot of Montana's valuable resource, as our President referred to them, the young people of our state, in our democratic process here in the State of Montana. I notice they got hung up on this same issue over in the State of North Dakota, and they're putting that as a side issue on their April 28th possible adoption of the Constitution. I think we can do better here in Montana. We might be number two. I think we're just going to have to try a little bit harder to become number one.

**CHAIRMAN GRAYBILL:** Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman and fellow delegates. There has been some reference to hasty action last night, and I wish to remind you that the Bill of Rights Committee has been considering this issue for a good length of this Convention and we considered it very carefully and, I feel, ably. And we came to the conclusion that age is not the primary qualification for holding the office of Governor, or Justice of the Peace, if you will. The primary consideration is the will of the electorate. And since some arbitrary age has to be chosen, then, in fact, the age which has been chosen by our federal government for voting, 18, is the logical arbitrary age to choose. At some point you have to draw the line, and since we, as part of the United States, have drawn the line at 18 for voting, that is the logical point to draw the line. There is no other good reason for drawing it at 18 or 19, 17, 21, 25, 30, 40, 45, 55. But our committee considered it very carefully, and we discussed it thoroughly in our committee, and we came to a unanimous decision. I do not consider this hasty. We conducted a hearing in which the people of Montana called in and overwhelmingly, three to one, something of that nature, favored the 18-year-old arbitrary limit. So I suggest we have not been hasty in recommending to this Convention that we draw 18 as the arbitrary age, and I suggest that the people of Montana are wise enough to understand that it is an arbitrary age and we do not intend that this mean that they shall vote for an 18-year-old Governor. But I suggest that we sustain the decision we made last night and defeat this substitute motion. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I would like to remind the delegation that we are not permitting 18-year-olds to run for Governor, but, rather, we are simply removing an arbitrary age restriction as a requirement for holding this office. I'd like to refer to the comment that Delegate Ask made, indicating that the age of 25 would demonstrate some proven maturity which ought to be a prerequisite for holding this office. Last evening, 59 of the mature delegates in this Convention voted in favor of the mature recommendation of the mature majority of the Executive Committee that had recommended deleting any arbitrary age classification, and I, for that reason, oppose my good friend Carl Davis' amendment, and I favor confirming the mature judgment of this mature body reached last evening.

**CHAIRMAN GRAYBILL:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman, I was here last night and I didn't speak on this issue, but I think perhaps I should. Now, there are several people here that are going to run for office. This is quite obvious. I'm not. I'm not going to run for office, so I'm not worried about the 18-year-old vote. But I would like to remind them that if this is what they're worried about, they'd better take another look at it, because we're not fooling these 18-year-olds one bit on this issue. I've talked to many of them. Now, one delegate over here made a very eloquent speech on this, and he referred to our Constitution as the child that we want to put out for adoption. Now, I would like to have a very healthy child when we put this out for adoption. I don't want some child that's been crippled, all mixed up. I would rather have a healthy one. When we were discussing a while back here about the Governor and Lieutenant Governor, I was tempted to say something to my seatmate here, but it was rather ridiculous. I was going to suggest that while the Governor was going home to attend graduation exercises from high school, who would be the Governor of Montana? That's all I'm going to say, Mr. Chairman. Thank you very much.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, in the hope that we will not extend this debate unduly, let me state that during the weeks that our Bill of Rights Committee held hearings, not one logical reason was ever advanced as to why the artificial barrier of age should not be removed. And I think the real consideration here, rather than go into all the arguments, is what effect is our action going to have in the public forum of the State of Montana. I think it's been brought out that we have to have confidence in the intelligence of our electorate. It's been well brought forth our electorate is not going to elect someone that's immature and incapable of holding the office, and that isn't the reason that should really concern us in this situation. My friend, Otto Habedank, my friend Carl Davis, I think have an overriding consideration for the action that they have taken by way of motion and for the argument they have presented. Otto and I were on the Constitution Revision Commission. There has been a lot of effort and several years of work that has been expended to bring this to this Convention Hall. And they're concerned about whether or not, when we're through here, this document is going to be accepted. And we can't go into every hamlet, village and town throughout the State of Montana and prove to them that their logic is wrong when they say that we have taken away dignity from the office, whether a person of this particular age is incapable. We can't take the time out to show them that their arguments are wrong and that there is no basis in fact or in reason for them. So, consequently, we've got to be concerned here about whether or not our action is going to help the constitutional document or hinder it. And I think that should be the basis upon which we vote here this afternoon. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Bates.

**DELEGATE BATES:** Mr. President, I used to shake in my shoes when I had to get up behind Delegate Dahood, but no longer do I do so. (Laughter) Two very logical reasons why our 18-year-olds shouldn't be allowed to be candidates for executive offices, the highest offices in the state, are primarily because they themselves do not want this responsibility. I have talked to them, to many of them, both here in Helena and at home, and they do not want this responsibility. The other very logical reason is, how much experience and practical knowledge does an 18-year-old have? Thank you.

**CHAIRMAN GRAYBILL:** Mr. Wilson was up last time, and he's up again.

**DELEGATE WILSON:** Mr. Chairman, I believe we're kind of beating around a point that we should really be taking a close look at here. It's [illegible] that we want to deprive the young people of their right to vote or their right to attain office. But what we're really talking about here is the prestige, the image, of the number one position in the State of Montana, the Governorship. And I think this is what we should be thinking about in our deliberations. I think the young people are asking us to use good common sense and preserve the image of the number one, highest elective office in the State of Montana. Further, upon adjournment of this committee last night, I ran into several young people, and they said that they were really shocked at the action and the deliberations that this committee had taken last night and that they were going home and talk to the young people in their schools and they were going to write letters, telling just how they felt about the unpractical thinking that we exhibited to them last night. I think, ladies and gentlemen, we're talking about image; we're talking about prestige; and I think we really should take a good reconsideration of this.

**CHAIRMAN GRAYBILL:** Mr. Drum.

**DELEGATE DRUM:** Thank you, Mr. Chairman. I rise to support Mr. Davis' motion. I took a shortcut through the south senate sun lobby over there today, and I heard a group of students who were questioning the speaker, who happened [illegible] members. And one of the questions that he answered was this: "Mr. Speaker, do we have to be a high school graduate to run for governor?" And his answer, I believe, was, "No, you just have to be 18 years old." A little bit later I joined a conversation where the conversation went something like this: "Remember when we ran the campus pooch as homecoming queen and won?" Wouldn't it be pretty easy for a bunch of wild [illegible] young people to think what a great joke it would be to put one of their mates into office, and when you start counting the number of students around that are interested in having fun, it may be a pretty easy thing for them to do. And, again, my mind reflected back to a time when I saw a boy look at his father, who was striving desperately to be his buddy, and the boy said to his father, he said, "Dad, I don't want a buddy, I want a father." Well, I think that we are demeaning the office of Governor, and I address our comments and our interest to the office of Governor. I think we've got to preserve some dignity there, and I think that if we support Mr. Davis' motion, we will preserve that dignity. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, fellow delegates. I rise in opposition for all of the obvious reasons given, but I would like to mention one other. I have before me the youth constitutional convention final report by the Montana YMCA youth in government. I have heard several delegates express a great deal of admiration for the work of these kids, and I wouldn't argue that they may not be a little bit over 18, but I would assume that many ot them are 18 and younger. I'd like to quote, for the benefit of the delegates, what it says about the eligibility for the position of Governor and Lieutenant Governor: "No person shall be eligible to the position of governor, lieutenant governor, secretary of state, et cetera, et cetera, unless he shall have attained the voting age." This is by the youth. I think this should destroy some of the talk about the youth not wanting the responsibility. I oppose it. I do have one other reflection before I sit down. I think perhaps we should be reconsidering what we did about the Attorney General which, in fact, tends to make an additional age requirement for him because of the experience that we have required. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I rise to respond to a number of remarks that have been made. First of all, Delegate Babcock's remark concerning common sense as the issue; I think she's exactly right. The issue is whether we trust the common sense of the electorate of Montana, and the people, I think, of Montana have enough common sense that they don't have to have this artificial restriction imposed upon them. We don't have to worry about them going out and electing some hot-rodder to the office of Governor. Now, secondly, a number of people have said that they have been in contact with certain of the younger people of the citizenry of Montana. So have I. I have been in contact with a representative of 20,000 of them who is paid, to come here and lobby, some four or five thousand dollars for this session, and I want to tell you that if his—he represents his constituency, then the 20,000 college students in Montana who are paying for his services must want the action that we took last night. And, finally, I want to say again that if this Convention wants to make itself look ridiculous, then have the word go out that we reversed a two-to-one vote on an issue of this sort, expressing a lack of confidence in the voters of Montana.

**UNIDENTIFIED DELEGATE:** Question.

**CHAIRMAN GRAYBILL:** Very well. Mr. Davis.

**DELEGATE DAVIS:** May I close just briefly? I think it's this important. Two of those children that are in the University of Montana are mine. They would feel very disappointed if I didn't vote my convictions here, would lay any blame on the youth for this thing failing. I am now, and will continue as long as this Convention is here, to try to make the most palatable Constitution with the best changes that I think we can get accepted by the people. I think your labors are going to be in vain if you say that 18-year-old is an adult for all purposes, if we never get to that point, or if you want the unicameral system, but you lose it on issues like this. You could vote between the ages—you couldn't run when you were 21 before, until you're 30—it's no change except it's been reduced to 25 and the age 18. Last night we had two ministers taking opposite sides of the issue. That would confuse anybody. But we had two chairmen from Butte even taking opposite sides. That's how confusing things were, so let's vote.

**CHAIRMAN GRAYBILL:** Very well, the issue is on Mr. Davis' motion—

**UNIDENTIFIED DELEGATE:** Roll call.

**CHAIRMAN GRAYBILL:** All right, we'll have a roll call. The issue is on Mr. Davis' motion to adopt the minority report, which is contained on page 38 and says: "No person shall be eligible to the office of governor, lieutenant governor, attorney general or superintendent of public instruction unless he has attained the age of 25 years at the time of his election, nor to the office of secretary of state, state auditor, state treasurer, unless he has attained the age of 25 years. In addition to the qualifications above prescribed, each of the officers named shall be a citizen of the United States and shall have resided within the state 2 years next preceding his election." So many as are in favor of that subsection, vote Aye on the voting machine. So many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** If not, please count the votes.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Absent |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Nay |
| Furlong | Nay |

| | |
|---|---|
| Garlington | Nay |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R. S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Absent |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Absent |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Aye |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Absent |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Absent |
| Skari | Aye |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |
| Graybill-Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 56 delegates voting Aye, 38 voting No.

**CHAIRMAN GRAYBILL:** 56 delegates having voted Aye and 38 having voted No, subsection 3 from the minority report on qualifications is now substituted in place of Section 3 in the majority. Now, ladies and gentlemen, we have one other amendment to subsection 3, which is now open. It's from Mr. Habedank.

Mr. Habedank, may I read your amendment?

**DELEGATE HABEDANK:** Please.

**CHAIRMAN GRAYBILL:** Section 3 now has subsection 1 and 2, and he says, add subsection 3: "In addition to the foregoing qualifications, the superintendent of public instruction shall possess such educational qualifications as are prescribed by law."

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman, I think the purport of this amendment is obvious. I think when people read through this Constitution and find that we have made the Superintendent an elective office and we have placed qualifications in there for the Attorney General, those people who are interested in education would feel that the office of Superintendent should also be protected, and it can be done adequately by law. There is nothing further to say.

**CHAIRMAN GRAYBILL:** Is there discussion?

Mr. Champoux.

**DELEGATE CHAMPOUX:** As a member of the Education Committee, even though Mr. Habedank didn't discuss this with me, I see no objection.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Didn't we do that? Didn't we say the Superintendent have such—oh, just duties, I see. I don't care.

**CHAIRMAN GRAYBILL:** This one—what we did was, we did not change the qualifications. This says, "In addition to the foregoing qualifications, the superintendent of public instruction shall possess such educational qualifications as are prescribed by law."

Very well. You've heard the motion of Mr. Habedank's. As many as—that when this committee shall arise and report, after having under consideration his proposed amendment to Section 3, by adding subsection 3 thereof, that it recommend that the same be adopted. All in favor of this motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it. Does anyone want to rise and state their name and ask for a division?

(No response)

**CHAIRMAN GRAYBILL:** Very well, the Ayes have it, and it's adopted. Now, the Chair has other motions to amend, or to reconsider, that are going to be asked for—at least two—and it does not seem that we could accomplish that before the dinner hour. Therefore, the Chair is going to suggest that we recess until tomorrow morning.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move that the Committee of the Whole rise and report progress and beg leave to sit again.

**CHAIRMAN GRAYBILL:** The motion is that the Committee of the Report rise and report progress and beg leave to sit again tomorrow morning. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?

(No response)

**CHAIRMAN GRAYBILL:** So ordered.

(President Graybill in Chair of Convention)

**PRESIDENT GRAYBILL:** Now, we're not in recess.

Mr. Lorello.

The Convention will be in order. The clerk—would you read the title of the motion.

**CLERK HANSON:** "February 25th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 4 of the Committee on Executive recommend as follows: That the committee rise and report progress and beg leave to sit again. Signed: Leo Graybill, Chairman."

**PRESIDENT GRAYBILL:** The report is 4 pages long. Is there anyone who wishes it read?

**DELEGATES:** No.

**PRESIDENT GRAYBILL:** Mr. Eskildsen, will you make a motion—

**DELEGATE ESKILDSEN:** Mr. President, I move the adoption of the Committee of the Whole report.

**PRESIDENT GRAYBILL:** The motion is to adopt the Committee of the Whole report. All those in favor, say Aye.

**DELEGATES:** Aye

**PRESIDENT GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**PRESIDENT GRAYBILL:** Do you want a recorded vote on that? (Laughter) Very well.

Mr. Eskildsen, will you make a motion to adjourn?

**DELEGATE ESKILDSEN:** A Rules Committee meeting at 8:30 in the morning. Rules Committee at 8:30 in the morning. Is anyone on your Committee on Rules? I move we adjourn until Saturday, February the 26th, 9 o'clock, a.m., 1972.

**PRESIDENT GRAYBILL:** The motion is to adjourn until—

Oh, pardon me, Mr. Berg.

**DELEGATE BERG:** Mr. President. In the absence of Mr. Holland, I have been asked to make this announcement on behalf of the Judiciary Committee. It's anticipated that the Judiciary Article will come up for argument tomorrow. We urge you all to examine the Judiciary Article, both majority and minority report, and we are going to ask, and I believe Mr. Holland has made arrangements, for relaxation of the rules in regard to the consideration of the Judicial Article in this—that both the majority and the minority will be argued on their basic issues, then you will be asked, I believe, to take a tentative vote as to which of the two reports you prefer. Thereafter, the one that passes—that one we'll go down section by section. Further, if you have amendments that you'd like to propose to either majority or minority, we would appreciate it if you would see both Mr. Holland, who will handle the majority, and myself, who will handle the minority end, so that we can present them in an orderly fashion. Thank you

**DELEGATE AASHEIM:** Mr. Chairman.

**PRESIDENT GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Legislative Committee pictures in the morning at 8:15 in the Governor's reception room

**PRESIDENT GRAYBILL:** Mr. Berg, I think you and Mr. Holland should attend the meeting in the morning to straighten the Chair and Rules Committee out on how we are going [illegible]

**DELEGATE BERG:** I'm sorry. I thought that Mr. Holland had taken care of that, but I'll be [illegible]

**PRESIDENT GRAYBILL:** Very well. The motion is to adjourn—

Oh, Mr. Vermillion, excuse me.

**DELEGATE VERMILLION:** Yes, I'd like to remind everybody here that there's going to be one final radio program on a call-in basis this coming Monday night—Natural Resources—and it will generally be on environment, possibly get it down to the public trust document, and I would urge everyone here, if you have some people back home who are interested in this, one way or the other, that you let them know about this and ask them, if they would like to, to call in and to get their comments heard. That's Monday night 8 o'clock, same time and place.

**PRESIDENT GRAYBILL:** Very well. The motion is to adjourn until tomorrow morning at 9:00 a.m. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

(No response)

**PRESIDENT GRAYBILL:** So ordered.

(Convention adjourned at 5:40 p.m.)

**February 26, 1972**
**9:26 a.m.**

**Thirty-Third Day**

**Convention Hall**
**Helena, Montana**

**PRESIDENT GRAYBILL:** The Convention will be in order. This morning, our invocation will be given by Sarah Gackel, one of our pages, from Rapelje. Will you all please rise. Sarah.

**SARAH GACKEL:** Shall we bow our heads? Dear Heavenly Father, we come to you today with humble hearts, thanking you for this brand-new day that we can make plans for a new constitution. Dear Lord, we thank you, too, that you brought us each safely here—each of the delegates, too, Lord. We pray that as they go through this day and the problems that they face in making a constitution, that they'll let you be their guide. We pray for President Nixon and his wife, Pat, and their staff, Lord, as they're in China. You know that—what they're facing, Lord. We pray that you might let him just be an instrument in Thy hand for peace. We pray for the POW's, Lord, and for peace—not only peace between two countries, Lord, but peace between two people, peace in the hearts of individuals, Lord, that only you can give. We pray that through this day and throughout the rest of the Con Con, that you might be their leader and their guide, and that they might look to you for everything. And we also pray, Lord, that you'll let the meditation of our hearts and the words of our mouth be acceptable to you, O Lord. In Thy name, we ask it. Amen.

**PRESIDENT GRAYBILL:** We'll take attendance this morning by voting Aye on the voting machines.

**CLERK SMITH:** Delegate Bates, Delegate Cate, Delegate Toole.

**PRESIDENT GRAYBILL:** Who's absent?

**CLERK SMITH:** Delegate Toole.

**PRESIDENT GRAYBILL:** Toole was here. You can mark him present. Please take the vote.

| | |
|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Present |
| Aronow | Present |
| Artz | Present |
| Ask | Present |
| Babcock | Present |
| Barnard | Present |
| Bates | Present |
| Belcher | Present |
| Berg | Present |
| Berthelson | Present |
| Blaylock | Present |
| Blend | Present |
| Bowman | Present |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Present |
| Cate | Present |
| Champoux | Present |
| Choate | Present |
| Conover | Present |
| Cross | Present |
| Dahood | Present |
| Davis | Present |
| Delaney | Present |
| Driscoll | Present |
| Drum | Excused |
| Eck | Present |
| Erdmann | Present |
| Eskildsen | Present |
| Etchart | Present |
| Felt | Present |
| Foster | Present |
| Furlong | Present |
| Garlington | Present |
| Graybill | Present |
| Gysler | Present |
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Present |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| Harrington | Present |
| Heliker | Present |
| Holland | Present |
| Jacobsen | Present |
| James | Present |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Present |
| Leuthold | Present |
| Loendorf | Present |

| | |
|---|---|
| Loendorf | Present |
| Mahoney | Present |
| Mansfield | Present |
| Martin | Present |
| McCarvel | Present |
| McDonough | Present |
| McKeon | Present |
| McNeil | Present |
| Melvin | Present |
| Monroe | Present |
| Murray | Present |
| Noble | Present |
| Nutting | Present |
| Payne | Present |
| Pemberton | Present |
| Rebal | Present |
| Reichert | Present |
| Robinson | Present |
| Roeder | Present |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Excused |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Present |
| Swanberg | Present |
| Toole | Present |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Present |
| Ward | Present |
| Warden | Present |
| Wilson | Present |
| Woodmansey | Present |

**CLERK SMITH:** Mr. President, 98 present, 2 excused.

**PRESIDENT GRAYBILL:** Very well. The journal may so show. Order of Business Number 1, Reports of Standing Committees.

**CLERK SMITH:** None, Sir

**PRESIDENT GRAYBILL:** Order of Business Number 2, Report of Select Committees.

**CLERK SMITH:** None

**PRESIDENT GRAYBILL:** Number 3, Communications.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** 4, Introduction of Delegate Proposals.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** 5, Final Consideration.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** 6, Adoption.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** 7, Motions and Resolutions.

8, Unfinished Business.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** 9, Special Orders.

**CLERK SMITH:** None.

**PRESIDENT GRAYBILL:** 10, General Orders of the Day.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

**PRESIDENT GRAYBILL:** The motion is to move the Convention into General Orders to consider the Executive proposal. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

(No response)

**PRESIDENT GRAYBILL:** The Ayes have it.

(Committee of the Whole)

**CHAIRMAN GRAYBILL:** Mr. Clerk.

**CLERK SMITH:** Mr. President, the following announcement will be—the following committee proposals are now on General Orders: Executive, Judiciary, Natural Resources, Revenue and Finance, Bill of Rights, Public Health, Education, Local Government, General Government, Style and Drafting Report Number 1 and Style and Drafting Report Number 2. The Bill of Rights Committee Proposal Number 8, having been duplicated and placed on the delegates' desks on the 24th day of February, 1972, at 9:00 a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules. The Public Health Committee Proposal Number 9, having been duplicated and placed on the delegates' desks on the 24th day of February, 1972, at 9:00 a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules. The Style and Drafting Committee Proposal Number 1, having been duplicated and placed on the delegates' desks on the 24th day of February, 1972, at 9:00 a.m., is now in compliance with Rule 23 of the Montana Constitutional Convention Rules.

**CHAIRMAN GRAYBILL:** Very well. We have this morning—before us, I believe, at least three matters for reconsideration of the Executive Article. The first is Mr. Nutting's. Mr. Nutting, may I read your proposal?

Mr. Nutting's proposal is: "Mr. Chairman. Having voted on the prevailing side on the adoption of the amendment to Section 5, subsection 1, I move the Committee of the Whole to reconsider its action on adoption of Section 5, subsection 1, as adopted." Mr. Nutting, where is Section 5, subsection 1, as adopted? 22 and 39?

**DELEGATE NUTTING:** Page 6 at the top of the page would be one place that it—

**CHAIRMAN GRAYBILL:** All right. Section 5, subsection 1, as adopted, reads, "Officers of the executive department, shall receive salaries provided by law." We struck out, in our original consideration, the phrase, "which may be increased but not decreased during the term of office".

Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman. I ask for reconsideration because several members requested it. This, if you'll remember, went through without a dissenting word. The members who wanted to speak on it and did not ask that I reconsider it. It does not mean that I have changed my mind. I am—firmly believe that it should remain as it is. I've talked to the Chairman of the Executive Committee. He does not have any objection to it, but as a matter of courtesy, I have asked that it be reconsidered so these members can be heard. Thank you.

**CHAIRMAN GRAYBILL:** Very well. Is there debate, not on the issue, but on the matter of reconsideration? If not, all in favor of reconsideration, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. All those in favor, please vote Aye on the voting machines, and those against reconsidering 5, sub. 1, vote No. Have all the delegates voted? Any delegate wish to change his vote? 53 having voted Aye, 35 voting No, we will reconsider it.

Mr. Nutting, may I read your proposal, or do you want to make this amendment?

**DELEGATE NUTTING:** I wish to have the amendment remain just like it is, but if someone wishes to object—and which two people did—then I would prefer they take it from here. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** Thank you, Mr. Chairman, and thank you, Mr. Nutting. I didn't talk about this when it came up. I didn't think that it would go through, and I was surprised. The only thing that I'd like to point out to the assembly, in this connection, is that what we've done here, of course, is remove a restraint which otherwise would have been on the Legislature, preventing it from retaliating against either the Executive or the Judiciary. I think that the Executive is probably strong enough to resist the threat of a diminution in salary during the term of the Governor, for example, by a Legislature of the opposite party. However, the Judiciary is not in the same position as the Executive. And I submit to the assembly that it is possible that a stubborn Legislature, when faced with the prospect that the Supreme Court is about to overturn a piece of legislation which the Legislature favored and which the Legislature passed, could and possibly would reduce the salaries of the justices out of a spirit of retaliation. There has been some difficulty between the Legislature and the Judiciary, anyway, so far as the matter of salaries are concerned. And it appears that there is some justification for the feeling of resentment that the judges have expressed toward the Legislature about the manner in which their salaries have been treated. I submit to you that this should be considered, because it does open up the possibility that the Legislature can, through the salaries of the justices attempt to intimidate them or actually intimidate them in the performance of their duties as judges.

**CHAIRMAN GRAYBILL:** Mr. Arness, we have no motion before us now. Do you want to make a motion to put it back in the way it was?

**DELEGATE ARNESS:** Yes. I move that the section be restored to its original condition so that it reads that the salaries provided by law, which may be increased but not decreased during the term of office. And I have already stated the reasons for my motion. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. We'll consider, then, Mr. Arness' motion, which would restore the last clause, the words, "which may be increased but not decreased during the term of office". That's the issue we're debating.

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I glossed over this in my discussion of this section—the other day, and I want to tell the Convention why the committee put in the original subsection 1. In our current Constitution, or in the Constitution as it was originally enacted in 1889, there was a provision in it that for all the—both the Executive, Legislative and Judicial, that the salaries could not be increased during the term of office. And we've all seen the foolishness of doing that, because of the inflation that has gone through, and as we've lengthened the terms of office, why, people come in and get elected; and they get a certain—there's a raise given and they can't get it for 4 years; and so in that interim period, why, the inflation has eaten up that raise and they're always behind; and it has been a mess. So what happened was that the Judiciary Article was amended by the people to provide that the Judicial salaries could be increased during the term of office but that they could not be decreased. And, so, we thought that was consistent to make that same provision in the Executive Article. As a matter of fact, the Executive Article was more restrictive in that it provided in the original Constitution, that they could be decreased, but that they could not be increased. And I think Mr. Arness' comments are valid, except that as I read the Judicial Article, it's going to come out to say just exactly what the majority of the—unanimous majority—unanimous feeling of the Executive Committee was. Their article is going to come out that it may be increased but not decreased. And we already took action in the Convention to authorize a commission to study these, and I think—I got the impression that it was the unanimous view of the Convention, that everybody realized that they should be able to be increased. And in the comments which I wrote, I thought that I was being a little sarcastic, but I said that our history has shown that the Legislature has not been overgenerous in giving raises to any elected offices, and the reason for that is because they've been—always had money problems. But at any rate, the reason the Executive Committee reversed it and said that they may be increased, and the amendment does not prohibit that now, and all that would be done if you put the provision back in is that you would prohibit the Legislature from decreasing it. And I, frankly, am not too worried that they ever will, arbitrarily, decrease anybody's salary just to punish him. And, of course, we have the king who can always veto his salary decrease, but it just seemed to me that, as originally drafted, we were being consistent with the present Judiciary Article, and that's why we drafted it as such.

**DELEGATE GARLINGTON:** Mr. Chairman. At our Style and Drafting meeting this morning, I was reminded of another action that the Convention has taken, which bears on this subject. I simply would like to remind all hands what Section 5 of the Legislative Article contains. That deals with compensation of legislators, and subsection 2 of Section 5 was amended on the floor to read as follows: "(2) A salary commission shall be created by the Legislature to recommend legislative"—and then it was amended on the floor—"executive, and judicial compensation". And I want to suggest to all hands present that if we do not restore the flexibility in the original Section 5 of the Executive Article, we will simply blunt the function of the salary commission, because there really will be no point in it if the recommendations they make to keep current with the financial and economic trends of life are obliterated by prevention of adjustments for increase as they find to be justified.

**CHAIRMAN GRAYBILL:** Mr. Arbanas.

**DELEGATE ARBANAS:** One of the very impressive thoughts that's been brought out over and over again at this Convention is the fact that, no matter what board we set up or what commission that we inaugurate, that the Legislature is really going to decide, by the amount of money they give it, whether it's going to operate or not. I'd hate to think that we'd put our Executive Department, or the state officers that we talked about yesterday as being so important, in the same category, that in every respect they would become like employees of the Legislature. I think they need a guarantee a little bit stronger than that.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. Arness' amendment to restore to Section 5, subsection 1, the language, "which may be increased but not decreased during the term of office".

Mr. Nutting.

**DELEGATE NUTTING:** Mr. Chairman. That—if you will just see what the amendment does, it does not prevent increases; it does not prevent decreases. As far as the amendment is concerned, we have been operating under the principle for the past 80 years that the Legislature could decrease it, and there has been no mention of any case where it has been accomplished. I'm merely leaving the point that it could be done either way. I'm looking forward to a situation that could conceivably happen, like in the early 30's, when, with the Governor's salary where it is now, it could be conceivable that we would not be able to reduce the Governor's salary, in case of a crash, for 4 years. We'd have to dig up the tax money to pay that kind of a salary, and under those conditions, I think people would want the salary decreased—the general population would. I don't think there has been any abuse of this for the past 80 years, and I see no reason why we should tie it into the Constitution that there cannot be a decrease in the future. Under my amendment, increases are allowed; decreases are allowed. That's all I suggest.

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** I think that I should point out that, for the last 80 years, it has not been possible to decrease the salary of a judge in the state. The amendment that I've proposed here is aimed only at insuring that we attempt, so far as is possible, to maintain the independence of the Judiciary. In order to do that, I think that we must safeguard their salaries. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE HANSON:** Mr. President. Unless I read this wrong, we are only considering here the Executive Department; I don't believe it would have any effect, Mr. Arness, on the Judiciary Department.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. I think that the people of Montana are well aware that the Judiciary has never had a decrease. The last three sessions of the Legislature has each increased the salaries of the Judiciary.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** Mr. Chairman. I was thinking that we could get a pretty liberal group in here and they'd give a[n] increase, and the next one give another big increase, and they know it's more than they should have, and you'd have no power to decrease it. I'd like to see it so you can go either way.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. President and delegates. I can go either way on this, but since we had a commission, I wonder if they might have their hands tied if we keep this last sentence. For example, they might think about a compensation which might include, say, a compensation over a period of years after retirement. There might be an income tax loophole that they might want to use, and maybe they might settle for a decrease in salary if they could get their compensation extended over a period of years after retirement. So I kind of feel that we shouldn't tie our legislative hands or the commission's hands by retaining the last sentence. I would reject the motion to amend it.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Arness' motion to add this half sentence to subsection 1 of Section 5. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it and so ordered. Are there other amendments to Section 5? If not, members of the committee, you have before you—let's see—I guess, Mr. Joyce, I need you to make a motion that Section 5 be reenacted.

**DELEGATE JOYCE:** Mr. Chairman, I move that when this committee does arise and report, after having had under reconsideration Section 5, subsection 1, of the Executive Article, that the same be recommended for adoption as amended.

**CHAIRMAN GRAYBILL:** All in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** So ordered. All right, next we have a proposal—I take it, Mr. Ward and Mr. Roeder, that you do not want to reopen Section [illegible] now.

**DELEGATE ROEDER:** That's right, Mr. Chairman.

**CHAIRMAN GRAYBILL:** All right. Then, the next one—Mr. Vermillion, you wanted to reopen Section 1, subsection 1, is that correct?

**DELEGATE VERMILLION:** That's correct, Mr. President. Having voted on the prevailing side, I'd like to have the committee reconsider Section 1, subsection 1, of the minority proposal. This would be on page 45. I've been asked to do this. I don't really think that I will change my vote, but I've been asked to do this because it was pointed out to me that we did not actually have the opportunity to vote on each office individually. We have been voting on—as we go through this subsection by subsection, and there are those who feel that it would be better if we had an opportunity to vote on each individual office in order that we could be recorded as how we stand on not only the Governor, but also the Lieutenant Governor, Secretary of State, and the State Treasurer, and the like. So I move to have Section 1, subsection 1, of the minority proposal, page 45, reconsidered.

**CHAIRMAN GRAYBILL:** Is there debate on the motion to reconsider?
Mr. Roeder.

**DELEGATE ROEDER:** Mr. Chairman, I would like to just say a word or two in support of Mr. Vermillion's motion. I was one of the persons who asked him to make the motion to reconsider because I knew he was on the prevailing side. I think you ought to take into consideration, when you vote on this motion to reconsideration, this thought. We voted on this section with very little discussion. We did not vote on individual offices, and I think a lot of people voted as they did in order to protect the office of Superintendent of Public Instruction. I think if that office had been segregated in our discussion and we had isolated some of these other offices to talk about, I think the outcome might have been quite a bit different. One final comment—I'm going to be very hard-pressed when I go home. I promised the people of District Number 11 that one thing I would do was make myself available to the full extent of my physical capacities to report to the people, by talking to service clubs and so forth. And I'm going to be very embarrassed when they ask me, "Well, what was the vote to retain Treasurer?" and I'm going to have to say, "We never really voted on it—What was the vote to retain the Auditor?" and I'm going to say, "We never really segregated it and voted on it." Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. The issue is on the motion of Mr. Vermillion to reconsider Section 1, subsection 1, of the minority report which was adopted. All in favor of the motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and we will not reconsider it.

**UNIDENTIFIED DELEGATE:** May we have a roll call vote?

**CHAIRMAN GRAYBILL:** You may vote, but we won't record it. All those in favor, vote Aye, and opposed, vote No. Has every delegate voted? Does any delegate wish to change his vote? 43 having voted Aye, 45 having voted No, the motion was defeated. I didn't realize I could call them that close.
Mr. Kelleher.

**DELEGATE KELLEHER:** (Inaudible) for the World Series.

**CHAIRMAN GRAYBILL:** Mr. Felt, do I understand that the one you put up here is not complete and you want to add a sentence? Do you want to use Mr. Murray's mike there?

**DELEGATE FELT:** Mr. Chairman. I discovered a typing error that's being corrected right now. I think it's all done, very simple.

**CHAIRMAN GRAYBILL:** Very well. Mr. Felt has a motion to reconsider Section 4, subsection 6, which is the qualifications of the—wait a minute—which is the State Auditor's office. Mr. Felt, do you wish to speak on the motion to make the reconsideration?

**DELEGATE FELT:** Mr. Chairman, I'll be glad to speak on it, but I would be ineligible to make the motion myself. Would you prefer to have the motion put first, before I speak?

**CHAIRMAN GRAYBILL:** Right. Who's to make the motion?

**DELEGATE FELT:** Mr. Murray.

**CHAIRMAN GRAYBILL:** Mr. Murray, will you make the motion.

**DELEGATE MURRAY:** Mr. Chairman. Having voted on the prevailing side, I move to reconsider—

**CHAIRMAN GRAYBILL:** That's Section 4, subsection 6.

**DELEGATE MURRAY:** —Section 4, subsection 6, and defer to Mr. Felt for the reasoning.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** Mr. Chairman and members. We will come forward with a big retreat—that's the best way to move forward sometimes—and accepting the sense that we felt existed here in the body, and after discussion with a number of persons, our present proposal would be to incorporate exactly the lines 2 through 5 on page 39 of the minority report and then to add words dealing with the legislative post-auditor for the purpose of constitutionalizing that office, making it immune from being found to be an unconstitutional act of the Legislature to create its own legislative post-audit committee, which then selects the legislative post-auditor. The exact language used in that is very much similar to the language used in our present statutes, but it does include, also, some additional words taken from the recent Michigan State Constitution which, along with practically all other new constitutions, do contain provisions of this type. And I won't speak any further, because I think I'm getting too close to the merits; but I wanted the Convention to realize that, in reconsidering, I'm not going to just ask you to vote again on the same proposal that was defeated. It's a completely different approach to this problem of external auditing.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** I rise to resist the motion. We debated it yesterday. We had a decision. What's being brought up is statutory. It's—can be handled by the Legislature, and I see no point in reconsideration.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Murray's motion to reconsider Section 4, subsection 6, the State Auditor. A roll call has been called for. All those in favor of reconsidering Section 4, subsection 6, on the State Auditor, please indicate by voting Aye; and those opposed, by voting No.

Have all the delegates voted? Does any delegate wish to change his vote? Will you please close the vote. Take the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Absent |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Aye |
| Choate | Aye |
| Conover | Nay |

| | |
|---|---|
| Cross | Nay |
| Dahood | Aye |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Abs |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Nay |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Absent |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Absent |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Absent |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Nay |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Absent |
| Scanlin | Absent |
| Schiltz | Aye |
| Siderius | Nay |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Absent |
| Toole | Nay |
| Van Buskirk | Absent |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Absent |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK SMITH:** Mr. President, 50 delegates voting Aye, 39 voting No.

**CHAIRMAN GRAYBILL:** 50 delegates having voted Aye and 39 No, we will reconsider Section 4, subsection 6. Now, you'll find that on page 39—it's line 2 to 5, and you should have put a small bracketed 6 in there to indicate that it's subparagraph 6. The text was incorrect.

Mr. Joyce.

**DELEGATE JOYCE:** The printed material on page 39 of the minority report did not pass. It was amended on the floor.

**CHAIRMAN GRAYBILL:** Oh, so it did.

**DELEGATE JOYCE:** And as I recall it, it says that "the Auditor shall have such duties as are provided by law", or words to that effect.

**CHAIRMAN GRAYBILL:** All right, I'll find that language.

Mr. Felt, you may now make your motion.

**DELEGATE FELT:** Thank you, Mr. Chairman, and thank you, fellow delegates, for the opportunity. I realize our time problem, and even though we have many serious matters, we have to budget that time. So I will be brief. As I've already stated, this continues, in effect, the present elected State Auditor's duties as they exist today. It also continues, but now places into the Constitution, the duties and functions of our present legislative post-auditor. The legislative post-auditor is the thing that I am particularly interested in seeing constitutionalized. I do know that, in addition to considerable opposition—and you always find opposition when someone talks about having departments of government audited externally by independent people—that it was very difficult and took several sessions to establish this type of external auditing, and, therefore, I have some fear that another group of individuals might, at some future time, feeling the same pressures that have been felt by other legislative bodies, decide that this is an unnecessary expense—like deciding you're not going to carry insurance, you hope that you won't need it, so maybe you'll do away with it—and the states that have adopted constitutions recently—six of the eight that have proposed recent constitutions, and six of the eight were approved by the people—it contained in their constitutions language such as this, calling for a legislative post-auditor. I know that practically all of the comments made yesterday were to the effect that they're very pleased with the way the legislative post-audit program has been functioning for these 4 years. And I think this is true of the people in general, and I think they would approve of our now placing this in the Constitution so that they know, and we know, it will be permanent. The proposal—I'll read it. It could cause subsection 6 of Section 4 to read as follows: "The State Auditor shall be the custodian of all fiscal records of the state. He shall be the issuing officer for all state warrants, with other duties and powers provided by law. In addition to the State Auditor, the Legislature shall appoint a legislative post-auditor, who shall conduct post-audits of financial transactions and accounts of the state, and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state, established by this Constitution or by law, and performance post-audits thereof. The appointment may be made through a legislative audit committee or as otherwise provided by the Legislature." I want to clear up a little confusion, because I have found, not only in the last 24 hours but in the preceding years, that there seems to develop some confusion about auditing. First, I want to make it clear we are talking about only external auditing. This has nothing to do with preauditing or any kind of internal auditing that is done on behalf of departments for their own information and to make sure that they are complying with the law as best they can. This is the checkup, you'll see, by an external audit. That's what we're talking about. Now, I also want to be sure that you realize there are three ways of selecting these external auditors that are used by the 50 states. Some are appointed by the Governor. Now, no one, today, I think, encourages that. If there's any one thing that would cause me to have to oppose this whole Constitution, it would be if we had attempted to select this external auditor by having him appointed by the Governor or from within what would be considered the Executive branch of government, as it is commonly considered. And I feel sure, for instance, that Mr. Bardanouve and others with whom I've worked on this for a long time—we fought that battle a long time ago and established the fact that it was improper to have this appointment made by the Governor—and I feel sure that he would feel that way today. And I attempted to contact him but found that he's very sensibly been in Hawaii for the last 2 weeks and is not available. The second method of selecting an external auditor is to have them elected by the people, but where this method has been used, as in Montana, it has generally worked out that the Legislature gradually takes away any powers of auditing. So you have someone called the State Auditor, but he doesn't do any auditing. So this has not, in recent years, been considered a very successful way of obtaining auditing. And the final way is to have them selected by the Legislature. This is the way that has been in vogue, particularly the last 15 or 20 years, in which Montana joined 4 years ago and which other states are joining, and which I am very anxious to see firmed up by this constitutional language. I will shorten what I would like to say on some other possible confusion. We did have committee hearings, and I have been in contact with the legislative post-auditor and obtained invaluable information from him. The State Auditor was also before us. The head of the Department of Administration—all of them—appeared before our committee discussing, at length, these problems of auditing. On the matter of costs, just so there won't be any confusion, the figures that you heard yesterday were unintentionally given as though they represented what the additional cost would be. In checking with the State Auditor myself, I find he had looked up the cost of the present auditing programs as they exist, and that was the figure that you heard, rather than of any additional. Of course, the proposal that is included in this proposed amendment now does not call for any additional auditing beyond what we are having now, but it does make certain that we do not lose what we are having now. I will not take any further time. I would be willing to answer questions if this is desired or if there's anything else I could do.

**CHAIRMAN GRAYBILL:** Just a moment, Mr. Joyce, before we answer questions—so that everyone understands, the language that we adopted yesterday on an amendment put in by Mr. Martin was: "The Auditor shall have such duties as provided by law". That's the present article. Now, the proposal by Mr. Felt this morning is to go back to the language that was in the minority report: "The Auditor shall be the custodian of all fiscal records. He shall be the issuing officer for state warrants, with other duties and powers provided by law." Then he adds several lines which, in effect, add: "In addition to State Auditor, the Legislature shall appoint a legislative post-auditor", and it goes on and explains the post-audit. All right, that's what we're considering.

Mr. Joyce.

**DELEGATE JOYCE:** Will Delegate Felt yield to a question?

**DELEGATE FELT:** I yield.

**DELEGATE JOYCE:** What is the purpose of including the words that "the State Auditor shall be the custodian of all fiscal records of the state"?

**DELEGATE FELT:** These were the words in the proposal of the minority of the committee, and their purpose is to continue the present policy of having those records safe in the office of the State Auditor as the custodian of the records.

**DELEGATE JOYCE:** Will you yield to another question, Delegate Felt?

**CHAIRMAN GRAYBILL:** Mr. Felt?

**DELEGATE FELT:** Yes, I'll yield.

**DELEGATE JOYCE:** When the amendment was made on the floor yesterday, do you believe that that particular issue was lost by the minority report?

**DELEGATE FELT:** No, I did not feel that it had even been dealt with, Mr. Joyce. My original motion had been to adopt the minority report, and then I had immediately made a substitute motion to delete all of the minority report, substituting all new language. We never got to my original motion which dealt with those two sentences, because Mr. Martin's intervened and replaced both of my motions.

**DELEGATE JOYCE:** Will you yield to another question, Delegate Felt?

**CHAIRMAN GRAYBILL:** Mr. Felt?

**DELEGATE FELT:** I will yield.

**DELEGATE JOYCE:** Well, when Mr. Martin's motion passed then, did that not, in effect, defeat the language that was included not only in your motion, but in the minority report?

**DELEGATE FELT:** In a sense, Mr. Joyce, it had the final effect of that. I thought, when you asked the other question, you meant did we discuss these particular two sentences, which had appeared in the minority report. And to my knowledge, there was never any discussion of either sentence.

**DELEGATE JOYCE:** Mr. Chairman, may I speak?

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Well, may I review for the Convention what's involved here? If you will recall, number one, the majority of the committee came out deleting the State Auditor from the State Constitution, so that his duties could—thereafter, the office could still be retained and duties assigned, new name assigned to it or anything else. But we were defeated on that. So, I accept the defeat. Then the minority report came up, and the minority report, as originally moved, wanted to require for all time that the State Auditor would be the custodian of all fiscal records of the state and be the issuing officer of all warrants. And Mr. Martin rose to amend that to not require that he do that for all time because he isn't doing it now. He only has part of the fiscal records. And the issue was debated on the basis of Mr. Felt's motion and Mr. Martin's substitute motion, and it had the effect, I think, of defeating the minority report in that connection. So, therefore, now, actually, Mr. Felt's current motion brings two issues before the Convention. Number one, should the State Auditor be the custodian of all fiscal records and the issuing officer of all state warrants from now until the Constitution is again amended? That's issue number one. Issue number two is that it could be that the State Auditor would have duties prescribed by law and that the legislative post-audit would be permissible and not unconstitutional in conflict with the word "Auditor" used in the Constitution. So, I submit, there are two issues. I am violent—I shouldn't say violently

(Laughter)—I'm philosophically opposed to issue number one. I am not opposed to issue number two, because—and I can't help say this to get a little needle in at the Convention—this whole matter wouldn't have come up at all if you'd have followed the majority report, but then, that's the way it goes. So, I think I am going to make a substitute motion, and I'm going to move to strike from Mr. Felt's proposal the words "The State Auditor shall be the custodian of all fiscal records of the state."—and, continuing to strike, "He shall be the issuing officer of all state warrants"—and after having done that, the first sentence of the section would then read what the Convention has already adopted, namely, that the State Auditor will have such duties and powers provided by law, plus Mr. Felt's amendment. And so, I so move, Mr. Chairman.

**DELEGATE FELT:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** I would accept the amendment and, if agreeable with the Chair, just incorporate it; and I believe we're reaching the very thing that we really desired, because my principal concern is what Mr. Joyce referred to as issue number two. If they like the language that he proposed, that would be quite satisfactory with me. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman, doesn't this bring up the question that you referred to the Rules Committee yesterday? And what was the ruling of the committee on this point? And this is something that I think was never announced, and I think we're back where we were again, aren't we?

**CHAIRMAN GRAYBILL:** With the exception of a couple of words, we are. Let me explain that the Rules Committee met, but Mr. Felt withdrew his motion of yesterday and decided to reconsider this Executive Article in this other form, and therefore the issue of how he should do it was not finally dealt with by the Rules Committee. Now, having amended it in this manner so that it's tantamount to adding a legislative post-audit, at this point, the Chair is back in the spot that you mentioned, Mr. Arness. Now, whether the addition of the phrase "in addition to the State Auditor" will save us or not remains to be seen.

Mr. Felt.

**DELEGATE FELT:** Yesterday, I had proposed adding an additional section at the end of the article, without any motion to reconsider. That's the fundamental difference, I think, as far as rules or their interpretation are concerned. Today, since it seemed like we weren't saving any time by doing it the other way, we did make the motion to reconsider and it was approved by the floor of the Convention—so that the section is open, in my opinion.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. Mr. Garlington and one of the members of the Committee on Style and Drafting has suggested, quite properly, to me the possibility that Style and Drafting would have to do something with this section when it was finally approved, if it is. What station am I getting this morning, Betty? I would question—I would think we'd have a serious problem in Style and Drafting of moving this to the Legislative Department, where it would belong, without at least the tacit approval—or this information to the committee that that's what we were going to do, and that's what I think we would do if this is approved.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** I think we're right back where we were yesterday. We're in the Legislative Article, and I don't think there's any doubt about this. Now, if this Convention is going to adopt the procedure of going back to amend this article and some other that belongs someplace else, it's going to be a long way down the line, because I think we've got eight left to go. And I think we (Inaudible) would happen. Now the Legislative Article—I know what Mr. Felt is getting at; he's trying to get legality of something; he's trying to get around a Supreme Court decision; but I think under the Legislative Article, as I interpret it, is that the interim committees will now be made legal. We will have that point out of the Constitution. And I think they have ample consideration, then, to have the legislative audit if the Legislature, in its wisdom, continues it. And I think there's plenty of power to get at the Governor to continue to get the appropriations, because I'm sure there will be just as smart a legislators as I ever was. And if I started worrying about the Governor and whether he's going to sign it or not, he'd get the legislative appropriation along about the 15th day of the session, and he'd have to veto it, and I'd have her back down, and you don't get yours, Mr. Governor, until we get ours. Now, I know how the legislative process operates. So I think that this thing had better be left alone and not touched, because now it is strictly legislative, only using this word, as the President has stated, under the State Auditor, and I don't want to contact anything with the Legislature over in the Executive branch of government.

**CHAIRMAN GRAYBILL:** The issue is on Mr. Joyce's motion to strike the first two sentences and to use the first sentence, which we had in Section 6 before, that the Legislature—that "The Auditor shall have such duties as are prescribed by law" and then add the last part of Mr. Felt's motion. So, if you want to debate that issue—that is, Mr. Joyce's substitute motion—please rise. If not, we'll quit that issue.

Mr. Wilson.

**DELEGATE WILSON:** Mr. President. I am a little bit concerned, and I would like to call it to the attention of this body, that at the present time, the State Auditor is the custodian of all the warrants of the State of Montana. He has them under his jurisdiction, and in fact, you have to about get a court order to get one of those warrants or get a photostatic copy thereof. It was called to my attention by both the State Auditor and the Attorney General that this is really an important legal function, that these warrants should be kept someplace where no one can disturb them or maliciously remove one from the records. This disturbs me just a little bit. I wish the body would think about maybe retaining those words in the article to the effect that the State Auditor would be the custodian of all state warrants, and then, "he shall have such other duties as may be provided by law".

**CHAIRMAN GRAYBILL:** All right. We're debating Mr. Joyce's substitute motion.

Mr. Artz.

**DELEGATE ARTZ:** Mr. Chairman. We have provided the two parts necessary for good internal control. We have a Treasurer that takes care of the money; we've got an Auditor that takes care of the books. We've got one step left to go; we've got to have somebody to come in and see that they've both done their job correctly.

**CHAIRMAN GRAYBILL:** Now, Mr. Artz, I really am going to stop you. That's arguing the second half of the issue. I want to know whether this body wants to strike the first two sentences, which have nothing to do with the legislative auditor so—

**DELEGATE ARTZ:** I thought that he had added the rest of it on Mr. Joyce's—

**CHAIRMAN GRAYBILL:** He does, but his—the point that we're trying to get at is the first part. Then we'll debate the legislative auditor thing after we've got that out of the way.

**DELEGATE ARTZ:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** I would like to inform the Convention what those words "all fiscal records" include. I was concerned about this before the thing came up on the floor yesterday, and I went down to the second floor here to inquire what "all fiscal records" would include. I was told that these would include all the books and accounts of all the state offices, including the court, the Governor's office, the Secretary of State, et cetera; it would include all the books and accounts of all state agencies; it would include, probably, even the records of the Budget Bureau. The term "all fiscal records" is about as broad and sweeping as it can get and far exceeds Mr. Wilson's concern about warrants. The definition of "fiscal records" means, I was told, any record pertaining to the receipt of or expenditure of public funds. The effect of this would be to put in single custody all the records for which preauditing, disbursement, accounting and post-auditing would be done, and this violates one of the basic rules that the disbursing officer should not also be the custody of all the financial records. So I feel that the Convention ought to know that these words "all fiscal records" would substantially change the functions of the Department of Administration and the entire bookkeeping and accounting records which have now been established under the reorganization plan, and I doubt that this is what is intended.

**CHAIRMAN GRAYBILL:** Mr. Roeder.

**DELEGATE ROEDER:** I rise in support of Chairman Joyce's substitute motion. I don't know if I can add to the substance of the discussion here, because Mr. Garlington has covered it with his customary thoroughness, but I would like to point out to the Convention that if you do not sustain Mr. Joyce, you are not supporting the status quo. You will be introducing radical change in the practices of maintaining records in this government—radical change. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** Mr. President. Would Mr. Garlington yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Be glad to.

**DELEGATE WILSON:** Mr. Garlington. I have one thing that is bothering me. We have stricken the offices of State Examiner. In our local area, we have serious problems with a certain school district in funds. This worries me a little bit now. Who is going to be available to check on any deficiencies or discrepancies that might creep into such school boards or school districts or counties?

**DELEGATE GARLINGTON:** Our committee was informed by a Mr. Saxby, Director of the Department of Administration, that that department is in the process of developing and installing a new system of bookkeeping and accounting for all of the state and local agencies. He said that when it got done, which would be in another year or two, Montana would have one of the more modern and progressive and efficient systems of this kind. At the present time, the state examiner does the auditing of school districts, cities, counties, et cetera, and the State Examiner told the committee that he felt his office should be not a constitutional function, because of this very subject of fluidity and change in the whole accounting, auditing and recordkeeping area. And I would say to Mr. Wilson that the State Examiner or some other similar officer, under the State Department of Administration, will certainly continue to do the auditing function to cities, counties, school districts, and agencies of that kind.

**DELEGATE WILSON:** Mr. President. These are just some of the things that bother me about what we're doing here. Are we providing adequate safeguard for the peoples' protection in the different functions of state government?

**CHAIRMAN GRAYBILL:** Mr. Martin was next.

**DELEGATE MARTIN:** I'll yield—

**CHAIRMAN GRAYBILL:** Mr. Martin yields to you, Mr. Garlington.

**DELEGATE GARLINGTON:** I just want to remind the Convention again that Section 12 of the Revenue Article contains quite a clear mandate of protection for all this. It reads: "The Legislative Assembly shall enact the necessary laws to insure strict accountability of all revenue received and moneys spent by the state, subdivisions, and districts thereof.

**CHAIRMAN GRAYBILL:** Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman. I went up to the roster and tried to interpret what the present amendment, as it reads, says. I wonder if we could—for the benefit of all of the delegates, if it could be read.

**PRESIDENT GRAYBILL:** Mr. Joyce's substitute motion is to strike the first two sentences, effectively, of Mr. Felt's motion and insert the sentence that we adopted yesterday. That sentence is, "The Auditor shall have such duties as are prescribed by law." Then the next sentence would be, "In addition to the State Auditor, the Legislature shall appoint a legislative post-auditor" and so forth. That's the rest of Mr. Felt's amendment. So, what we're debating now is whether to eliminate the first two sentences. The first two sentences of the Felt amendment say: "The State Auditor shall be the custodian of all fiscal records of the state. He shall be the issuing officer of all state warrants, with other duties and powers provided by law." Now, Mr. Joyce wants to remove those two sentences and replace it with a sentence that says: "The State Auditor shall have such duties as are prescribed by law." Then we would consider, after we've done that, whether or not to add on—or whether or not to include in the thing—we would still be debating Mr. Felt's basic motion on the legislative post-audit.

Very well, a question—Mrs. Babcock.

**DELEGATE BABCOCK:** Would Mr. Garlington yield to a question, please?

**PRESIDENT GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** I sure will.

**DELEGATE BABCOCK:** In the matter of compromise, would you consider amending the section to read like this: "The Auditor shall be the issuing officer for all state warrants, with other duties and powers provided by law"?

**DELEGATE GARLINGTON:** Well, Mrs. Babcock, this is not for me to say on my own. I inquired how warrants are handled now. All the state warrants, including the ones that we all get, are made up on a computer which is down in the Department of Administration. And the computer somehow delivers these warrants to the Auditor, and all in the world the Auditor does with warrants is either to mail them out or hold them there for personal delivery. So, really, you can say, maybe, that he is the issuing officer for all warrants, but, in fact, there is a sort of a use of electronic computer function in state government now, and warrants are simply a part of it. It seems to me, to answer your question specifically, that if the Constitution says that the Auditor shall be the issuing officer of all warrants, then we probably got to buy him a computer in order that he can carry out the constitutional mandate. This is only a part of the reason why our committee thought that this whole area does not belong in the Constitution.

**DELEGATE BABCOCK:** May I ask Mr. Garlington another question?

**PRESIDENT GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Fine.

**DELEGATE BABCOCK:** Mr. Garlington, doesn't each warrant have a number on it, and isn't the Auditor responsible for seeing that each number is accounted for? Also, would it be possible for you to go down and get a warrant, the warrant itself, after it has been cashed, from the Auditor? Could you go down now and get one?

**DELEGATE GARLINGTON:** My dear, I don't have the foggiest idea.

**DELEGATE BABCOCK:** Well, I'm certain that you couldn't without a court order.

**CHAIRMAN GRAYBILL:** Mr. McDonough.

**DELEGATE McDONOUGH:** Mr. President. I urge everyone to vote against both Mr. Joyce's motion and Mr. Felt's motion. As Mr. Garlington has pointed out, the matters covered by the proposed Section 12 of the Revenue and Finance sections—it's also mentioned in proposed Section 13 of Revenue and Finance, relative to an audit of the investment program. And I think the proper place to debate it is when those sections come up and not under—now, where we're going to have some problems of what article it should be in the Constitution. It should be debated at this time when the accountability comes up and when the audit of the investment program comes up.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Joyce's substitute motion to strike the first two sentences and add a sentence like the one we adopted the other day, which says, "The Auditor shall have such duties as prescribed by law."—and then tack that onto Mr. Felt's amendment. All in favor of Mr. Joyce's motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. All in favor, vote Aye; and all against, vote No.

**DELEGATE ARONOW:** (Inaudible) vote on two parts on this matter?

**CHAIRMAN GRAYBILL:** Yes. We're going to still consider Mr. Felt's motion after this is finished.

Mr. Habedank.

**DELEGATE HABEDANK:** I wish to be sure on what I'm voting. In voting on this, I am not voting to adopt Mr. Felt's motion. We can go back to what—

**CHAIRMAN GRAYBILL:** No, you're voting to amend it by taking the first two sentences out and putting another one in, and then debate it again.

Have all the delegates voted? Any delegate wish to change his vote? All right, we'll close the vote. 53 having voted Aye, 34 having voted No, Mr. Joyce's motion prevails and Mr. Felt's amendment is now amended in that manner, 58 to 34. Very well. Debate is now open on Mr. Felt's basic motion again.

Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman, may we now have a ruling from the Chair on the question that was put to the Chair yesterday?

**CHAIRMAN GRAYBILL:** Well, the Chair is going to rule, subject to your right to overrule, that since Mr. Felt has included this language, that in addition to the State Auditor the Legislature shall appoint another Auditor, that perhaps since we're dealing with the topic of Auditor in the Executive branch, it's fair for the Constitution, at that point, to point out that there shall be another Auditor somewhere else. So I'm going to rule that we can debate it and decide it today. Now—

**DELEGATE ARNESS:** (Inaudible) the Chair.

**CHAIRMAN GRAYBILL:** Very well, Mr. Arness has appealed the ruling of the Chair. That's debatable. But let's not debate it too long.
Mr. Felt.

**DELEGATE FELT:** (Inaudible) Executive Article or the Article on Taxation and Revenue; I can see reasons for it coming up in any of them. If the Legislative Article had not already passed through the body, why, I think that I would have proposed this to that article. I feel that revenue and taxation could conceivably handle it but that they would have no greater claim on it than would be the case of the Executive Article, where we do, as the Chair has already pointed out, have other matters dealing with the same subject matter.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman. I feel this Chair should be sustained. I know that throughout our current Constitution, and I know in our new Constitution, there'll be references to what the Legislature shall do. I call to your attention Article XVIII, Labor. The Legislative Assembly shall provide for department of—Legislature—under the Executive Section 17, the Legislative Assembly shall provide a seal for the state. I think it's perfectly legitimate to consider this area under the Executive Article, and I think Style and Drafting should be able to place it wherever it belongs in the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Mr. Chairman. I'd just like to add a very practical thing. I hope you will be sustained in this, simply because I'm tired of talking about it. I mean by that—not—I don't think the issue is important, but I think we've talked about it under this guise, and I would hate to see us pass this thing over with no decision now and bring up the whole thing again I don't care where else. Let us decide it now.

**CHAIRMAN GRAYBILL:** Very well. Under the rules, the Chair is allowed to explain his position. My position is similar to the arguments you've made that—it seems to me that it could be construed as a part of the Executive Article and that it would be best to decide it now. And that, then, in my view, Style and Drafting has a free hand to put it wherever it ought to go. So many as shall be in favor of sustaining the Chair, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** Well, the Ayes have it. Very well. We're now debating again Mr. Felt's proposal for amending Section 4, subsection 6, by adding what is now the first sentence, "The Auditor shall be given such duties as shall be prescribed by law."—plus this other language. Is this other language on the desks?

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** All right, I'll read it again. "In addition to the State Auditor, the Legislature shall appoint a legislative post-auditor, who shall conduct post-audits of financial transactions and accounts of the state, and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state, established by this Constitution or by law, and performance post-audits thereof. The appoint [appointment] may be made through a legislative audit committee or as otherwise provided by the Legislature." The language has the effect of establishing a legislative post-auditor in the Constitution.
Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President. I am inclined to favor this motion, but I object to being asked to vote on something which I cannot look at, which I cannot study. I write shorthand. I am capable of writing probably about 100 to 120 words a minute. Anymore, my speed isn't what it used to be, but I couldn't keep up with the Chair, and I think that if we are asked to vote on anything, and when something is read that has not been given to us, it should be read at a speed that a person can write in longhand. It may delay things, but I think that we're entitled to this.

**CHAIRMAN GRAYBILL:** I might point out to you, Mr. Habedank, I think the language was placed on your desk in very similar form yesterday. If you have yesterday's—isn't that right, Mr. Felt? No?

**DELEGATE FELT:** I believe that there were at least four words that would be considered different, and they—it wouldn't be quite enough perhaps for somebody who wanted to check out exactly. I can assure the Chair and the members of the Convention that the essential meaning of this language is the same. This language here is taken primarily from the Michigan Constitution.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** May I ask Mr. Felt to yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** I yield.

**CHAIRMAN GRAYBILL:** Mr. Felt—Mr. Garlington.

**DELEGATE GARLINGTON:** Would you tell us, Mr. Felt, how much of a change would be effected, by the mandatory effect of the language you are putting into this amendment, on the present post-audit functions, both as to volume and the offices and records that are being handled?

**DELEGATE FELT:** Mr. Garlington, there would be no change in the matters that you referred to. The only change is to make it a constitutional requirement that such a function be continued. They are unable to audit all of them as often as they would like to because of a budgetary problem, but all of them are available to be audited. And that—I have the present statute here. I'd be glad to deliver it to Mr. Garlington for his examination. It's—

**DELEGATE GARLINGTON:** I'm asking whether this would substantially increase the burden on the legislative post-audit function.

**DELEGATE FELT:** No, it does not increase the burden. The only thing that could increase the burden would be a larger budget, and then they might have to have a larger staff and, in that sense, a larger burden.

**CHAIRMAN GRAYBILL:** Ladies and gentlemen, the Chair is bothered by Mr. Habedank's request, because I think it's a legitimate one. And Mr. Habedank, I'd have it printed. In fact, I thought about having it printed, but the print shop is closed, this being Saturday. So let's take our pencils and let's write it out. "In addition to the State Auditor"—now, I'm skipping the first sentence, which is what we passed yesterday—the first sentence says that the Auditor shall have such duties as prescribed by law. The second sentence would read: "In addition to the State Auditor, the Legislature shall appoint a legislative post-auditor, who shall conduct post-audits of financial transactions and accounts of the state, and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state, established by this Constitution or by law, and performance post-audits thereof." I think that may mean "and perform post-audits thereof"—no, "and performance post-audits thereof." All right. I guess he conducts post-audits and performance post-audits thereof, period. "The appointment may be made through a legislative audit committee or as otherwise provided by the Legislature."

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move as a substitute motion that all of—if you'll follow along with me; we all have it written out. I'll put it in language after I've—telling you what I'll do. I propose to leave in the words "in addition to the State Auditor, the Legislature". Where it now says "shall", I propose to amend to "may". I propose to leave in "appoint a legislative post-auditor". I propose to strike all of the remaining language and insert in lieu thereof the words "who shall perform such post-auditing duties as are prescribed by law".

**CHAIRMAN GRAYBILL:** Very well. We'll be in—we'll stand for a moment while we change the tape.

(Tape changed)

**CHAIRMAN GRAYBILL:** The committee will be in order.

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, may I speak in support of my amendment?

**CHAIRMAN GRAYBILL:** Yes, sir.

**DELEGATE JOYCE:** In my humble opinion, we have the issue narrowed down precisely to what I understood Mr. Felt was trying to do. That is, namely, make it perfectly clear, as people are willing to say from time to time, that just because we have a State Auditor, we can still have the legislative post-audit and it can't be declared unconstitutional by the Supreme Court. And I am in favor of that. And so I am going to vote in favor of the amendment, but I am opposed to writing all the rest of the stuff into the Constitution, because it then makes the legislative post-auditor into a way bigger job than it is now. And I prefer to allow the Legislature to expand, as conditions warrant in the future, this legislative post-auditing process. But it will accomplish at least one of Mr. Felt's purposes, which I think is praiseworthy, that the Supreme Court may not knock out the legislative post-audit because of the ill-considered action of this Convention of keeping a State Auditor in the Constitution.

**CHAIRMAN GRAYBILL:** Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. President. I'd like to offer a substitute motion to the substitute.

**CHAIRMAN GRAYBILL:** No, you may amend the substitute motion, but you can't offer another substitute. So you might state it, and we'll decide whether—

**DELEGATE BABCOCK:** Well, I'd like the words to read, "The Auditor shall be the issuing officer for all state warrants, with other duties and powers provided by law."

**CHAIRMAN GRAYBILL:** I think, Mrs. Babcock, after we've—that's not an amendment to the Joyce language, and so, the rule is we don't have two substitute motions. But when we finish adopting or throwing out Mr. Joyce's language, I'll get you back and you can take that up. All right. We're on Mr. Joyce's language, which changes the "shall" to "may". "In addition to the State Auditor, the Legislature may appoint a legislative auditor, who shall perform such post-auditing duties as shall be prescribed by law." So many as shall—

Mr. Felt.

**DELEGATE FELT:** I would support the amendment offered by Mr. Joyce. It does do as he said—make it certain that the Supreme Court at least cannot declare unconstitutional the effort of the Legislature to have post-auditing. If the Legislature, for some reason, did not appropriate funds to carry it out or if they failed to act on it—I guess this is a problem we have to leave to the Legislature itself. I am satisfied with the essential elements that are still retained, and I hope—I know that if we ever get back to my motion, I'm not going to make any speech at all on that. I hope we can move it along.

**CHAIRMAN GRAYBILL:** Mrs. Babcock.

**DELEGATE BABCOCK:** May I ask Mr. Joyce a question, please?

**CHAIRMAN GRAYBILL:** Mr. Joyce, will you yield?

**DELEGATE JOYCE:** Yes, very gladly.

**DELEGATE BABCOCK:** If your motion prevails, would that prevent the Auditor from taking care of these warrants as he does now?

**DELEGATE JOYCE:** It wouldn't prevent him, but it wouldn't require him. We've already beaten that motion, as I understand, Mrs. Babcock. But the Legislature can let the Auditor continue to take care of the warrants for time immemorial, just as he has in the past, whatever care he does take of them. But, it wouldn't require it.

**DELEGATE BABCOCK:** Thank you.

**CHAIRMAN GRAYBILL:** All right. The—

Mr. Martin.

**DELEGATE MARTIN:** Just a point of inquiry. If there's a vote on the Joyce amendment, does that carry the Felt amendment, or do we get back to that?

**CHAIRMAN GRAYBILL:** No, we're still going to give you a chance to consider it. We never cut off debate if we can help it.

Mr. Artz.

**DELEGATE ARTZ:** Mr. Chairman. I think, at long last, we're on the right track. We do have the Legislature empowered to set up some nice, internal controls. We have a Treasurer. The Legislature may let him take care of the money; they don't have to. We have an auditor. The Legislature may make him responsible for the books and the records. At this point, if we pass the Joyce amendment, we will have an outsider who will come in and see that the Treasurer has taken care of the money properly, the Auditor has taken care of the books and records, that the assets are still here; and I don't think it's too much of a step forward that it will upset the voters, because the Legislature may still do it. I support Mr. Joyce's motion. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, will Mr. Joyce yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** I will.

**DELEGATE BLAYLOCK:** Mr. Joyce, I'm not a lawyer, so I can't—I don't know what the answer to this question is and I have to ask you. You state the fear that the Supreme Court of the State of Montana may declare a legislative post-auditor unconstitutional. I can't understand why they would do that. Are you saying that the members of the legal profession—that we have to protect ourselves from the Supreme Court?

**DELEGATE JOYCE:** No. What I'm saying is that the argument can be made, and with some plausibility, that because the present State Constitution says that we shall have a State Auditor, the Supreme Court could say, "Well, the Constitutional Convention—the Constitution means that he is the Auditor of the State." And then if you have—the Legislature undertakes to appoint another auditor, that's in violation of the Constitution. I want to make it perfectly clear that we're giving the State Auditor duties prescribed by law. We're using a bad word for what he's currently doing, but we're doing it; and I've lost, and there's no use rehashing it; but we are saying that we're going to have a State Auditor, who will have duties prescribed by law. And then we're making it perfectly clear that we can have a legislative post-auditor, so there'd be no possibility of anyone—even the most ingenious lawyer—of arguing that the legislative post-auditor function is unconstitutional. I further think, in answer to your question, if my amendment prevails, that the rest of Mr. Felt's proposal will go down the drain in that we won't get back to it. Isn't that correct?

**CHAIRMAN GRAYBILL:** Are we ready to vote? All those in favor of Mr. Joyce's substitute motion, which is that the second sentence would read: "In addition to the State Auditor, the Legislature may appoint a legislative post-auditor, who shall perform such post-audit duties as shall be prescribed by law." All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted. Now we're on Mr. Joyce's amendment, which I just read, that the Legislature—that "In addition to the State Auditor, the Legislature may appoint a legislative post-auditor, who shall perform such duties as shall be prescribed by law." Does anybody care to amend that? Why don't you move that when this body arises, and then we'll debate that.

**DELEGATE JOYCE:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 4, subsection 6, that it recommend the same be adopted as amended.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** I have nothing further to say. I hope no one else does either. (Laughter)

**CHAIRMAN GRAYBILL:** Never mind those commercials. Now, who else wants to—

Mr. Martin.

**DELEGATE MARTIN:** Mr. Chairman. I would like for Delegate Harper to answer—read a section of the Legislative Article, if he would, please.

**CHAIRMAN GRAYBILL:** Delegate Harper.

**DELEGATE HARPER:** I know which section he means, since I've been prompted. I think Delegate Martin wants us reminded that in the Legislative Section 10, subsection 5—I don't think you need to turn to it—"the Legislature may establish interim committees which may meet and exercise all legislative authority delegated to them."

**DELEGATE MARTIN:** I wonder if Mr. Joyce would answer to a question.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** I yield.

**DELEGATE MARTIN:** Don't you think, under that article, that the constitutional provision is made in the new Constitution which would accomplish the same thing as your motion?

**DELEGATE JOYCE:** Not necessarily, no. That authorizes legislative interim committees. And that makes it perfectly clear that they're now constitutional. And the post-auditor isn't really a legislative interim committee at all. He's an employee of the Legislature. And I don't think that necessarily accomplishes it. That's my opinion, yes.

**DELEGATE MARTIN:** I rather hate to disagree or to take issue with my Chairman on this matter, but I opposed reconsideration a couple of times this morning. I think once we debate something, we ought to let it go. In my opinion, this thing is statutory and not constitutional, and I hope the motion is defeated.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. President. I hope that somebody don't come back in here and decide we got to put in the Constitution the Legislative Council is constitutional. You start opening this thing up, and you start to wonder just where we're going to stop. Now, say that the Legislature, in its wisdom, and the Governor decided to have some other department do the auditing, and they would abolish this department. Well, they can't do it. I just question whether we want to go in here and single out one thing in the Constitution and says, you shall have a legislative auditor. Now, if there—and it's good, they'll have it. Then I think that we'd be opening up a gate here.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** May I ask Mr. Mahoney a question?

**CHAIRMAN GRAYBILL:** Mr. Mahoney?

**DELEGATE MAHONEY:** Yes.

**DELEGATE JOYCE:** Doesn't my amendment say that the Legislature may establish a post-auditor?

**DELEGATE MAHONEY:** I'm afraid, and I've always been afraid, of "may" and "must" and "shall", because it all depends on who writes the opinion. And I've seen some terrible opinions written on "may" around here.

**DELEGATE JOYCE:** But at any rate, you do concede—

**CHAIRMAN GRAYBILL:** Mr. Joyce—

**DELEGATE JOYCE:** —that it does say "may"?

**DELEGATE MAHONEY:** (Inaudible)—Yes.

**CHAIRMAN GRAYBILL:** All right
Mr. Leuthold.

**DELEGATE LEUTHOLD:** Would you read the whole section again, so we can fully understand it?

**CHAIRMAN GRAYBILL:** All right. The issue is on Mr. Joyce's substitute motion as amended: "The State Auditor shall have such duties as are provided by law. In addition to the State Auditor, the Legislature may appoint a legislative post-auditor, who shall perform such post-auditing duties as shall be prescribed by law." So many as shall be in favor of that motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered. And that takes care of Section 4, subsection 6. Are there other—
Mrs. Warden.

**DELEGATE WARDEN:** Mr. President. I don't know whether I'm in order making this or not, but could there be a motion to suspend rules and reconsider Section 1?

**CHAIRMAN GRAYBILL:** There could be a motion to suspend the rules and reconsider Section 1, yes.

**DELEGATE WARDEN:** May I make it?

**CHAIRMAN GRAYBILL:** Let me think a minute. Let's see what happened here. Mr. Vermillion moved to reconsider Section 1, sub. 1, and it was defeated. You want to make a motion to reconsider Section 1, sub. 1?

**DELEGATE WARDEN:** Yes. I voted on the prevailing side.

**CHAIRMAN GRAYBILL:** All right. Now, to do that, you have to make a motion to suspend the rule.

**DELEGATE WARDEN:** May I do so?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE WARDEN:** Rule 27.

**CHAIRMAN GRAYBILL:** Mrs. Warden wishes to make a motion to suspend the rules in order that she might reconsider, a second time, Section 1, subsection 1. So many as are in favor of her motion, please say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** All right. Mr. Mahoney, you have an objection?

**DELEGATE MAHONEY:** I think—and I want this issue cleared up. I don't care how the vote goes. But if we're going under the rules and it says you can't reconsider reconsideration—if you're going to turn around and suspend rules—and the same thing, I think we're going to get into a lot of trouble around here, Mr. President, in the future. And, while I don't know anything about—more than that—but I think we must establish a principle here that, if we're going to, by suspending the rule, get around a rule—and I think this is what we'd be doing—I would question it. I think we ought to be careful of this.

**CHAIRMAN GRAYBILL:** I think you're right, and I think we did sustain the fact that we're not going to suspend the rules easily. All right. Are there other motions to reconsider? The Chair has none. The Chair has held up, based on the stare decisis—that's a word that the cowboys down in Power River use—(Laughter)—based on stare decisis of that little problem Mr. Blaylock had the other day, the Chair held up a notice from the Auditor's office that they'd be open from 10:00 until 2:00 for pay purposes, while we were debating that matter (Laughter)

Mr. Joyce.

**DELEGATE JOYCE:** Do I take it, Mr. Chairman, we are now completely through with the Executive Article, Section 1 to 14, as amended?

**CHAIRMAN GRAYBILL:** Yes. Would you like to move that when this body does arise and report, that we should adopt that?

**DELEGATE JOYCE:** Yes, I would. I just want to make one final—I'm going to be quiet. I would like to thank—on behalf of the Executive Committee, we appreciate the wisdom of the Convention in the conduct in what the article has been. I think it appropriate at this time, however, that I make this observation. I think the record should show that the committee and the Convention are obligated to Delegate Garlington and Roeder for the fine draftsmanship, which I think it was. They're also—and I'm—as the Chairman, want to say that I enjoyed working with the entire committee, and that while the minority wasn't more than the majority, I congratulate them for it. I think that we conducted ourselves honorably and sociably, and I just wanted the record to so show. And with that, Mr. Chairman, I move that when—

**CHAIRMAN GRAYBILL:** Mr. Joyce, you don't need to move that. Mr. Eskildsen is going to move.

Just a minute. Mrs. Van Buskirk, for what purpose do you rise?

**DELEGATE VAN BUSKIRK:** Mr. Chairman. I wonder if this—if I would be in order now to speak on my vote last night.

**CHAIRMAN GRAYBILL:** Yes, Mrs. Van Buskirk, explain your position, and the Rules Committee can listen. I think we're in order, before we go on the journal—before we come out of the committee. Go ahead.

**DELEGATE VAN BUSKIRK:** I would like to say that I voted Aye and I wanted to vote Nay on the Davis amendment. I was called out of the room on the telephone, and when I came back in, I was misinformed on what we were voting on, and I voted Aye, and I would like to say that my intent was to vote Nay.

**CHAIRMAN GRAYBILL:** On the basis of mistake, rather than on the basis of a change in mind. This is on Mr. Davis' motion on what? Eighteen-year-old vote?

**DELEGATE VAN BUSKIRK:** Yes, that the age limit be changed to 25.

**CHAIRMAN GRAYBILL:** Right. She voted Aye and she wished to vote No. Can she amend the journal to show that? All in favor of letting the journal be amended to show Mrs. Van Buskirk's No vote—

Mr. Mahoney.

**DELEGATE MAHONEY:** I think the rules say once it has been announced, we can't change it. Now, if she wants for the record to just let the record show that she just voted wrong, that's all right. But to ask you to go back and change the vote, I think we would be in serious trouble, Mr. President.

**CHAIRMAN GRAYBILL:** Yes, I think you're right, Mr. Mahoney. The Chair is going to accept your help here. Mrs. Van Buskirk, let's say, for the record, that you make a mistake and you voted wrong. And we'll put it in the record, but if we let you change your vote, then anybody could go back and change a vote, and the first thing you know, one of these votes would be overturned, like that 48 to 48 one. So, the record will so show, Mrs. Van Buskirk. Now Mr. Eskild—

Mrs. Babcock.

**DELEGATE BABCOCK:** I'm sorry. Mr. President. I'd like, on behalf of the minority report, to thank our Chairman, Mr. Joyce, and the rest of the members. I think that it was a true example of democracy and nonpartisanship in action. We certainly appreciated all the courtesies they showed to us throughout this Executive report.

**CHAIRMAN GRAYBILL:** And the Chair would like to point out that Executive got through in 2 days, if you watch the clock and if we hurry.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. I move the Committee of the Whole rise and finally report and refer the Executive proposal to Style and Drafting.

**CHAIRMAN GRAYBILL:** All those in favor of the motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No Response)

So ordered. We will sign the report and go into Convention.

(Out of Committee of the Whole)

**PRESIDENT GRAYBILL:** The Convention will be in order. Mr. Clerk, will you read the report of the Committee of the Whole? Unless objection is made, we'll read today's Committee of the Whole report only.

**CLERK SMITH:** "Mr. Chairman. We, your Committee of the Whole, having had under consideration Report Number 4 of the Committee on Executive, recommend as follows: Delegate Nutting, having voted on the prevailing side in adopting Section 5, subsection 1, as amended in the Committee of the Whole on the previous day, moved that the committee reconsider its action. Motion carried. Motion of Delegate Arness to restore the language in Section 5, subsection 1, as proposed in the majority, be not adopted. That Section 5, subsection 1, as amended in Committee of the Whole on the previous day be adopted. Delegate Vermillion, having voted on the prevailing side in adopting Section 1, subsection 1, in the Committee of the Whole on the previous day, moved that the committee reconsider its action. Motion failed. Murray, having voted on the prevailing side in adopting Section 4, subsection 6, in the Committee of the Whole on the previous day, moved for reconsideration. Felt requested a roll call vote. With sufficient seconds, the motion to reconsider passed by the following recorded roll call votes: Ayes 50, Nays 39. Joyce's substitute motion to amend Delegate Felt's amendment to subsection 4 of Section 6 carried as follows: Delete the first two sentences of proposed amendment and replace with the words adopted yesterday which are, 'the Auditor shall have such duties as prescribed by law'. Delegate Arness asked for a ruling of the Rules Committee requested yesterday as to whether Delegate Felt's amendment may be considered. The Chair ruled that it could be discussed at this time. Delegate Arness challenged the ruling. The Chair's ruling was sustained. That Delegate Joyce's substitute motion to amend further Felt's proposal as follows: that the remainder of Felt's amendment after the first sentence read as follows: 'In addition to State Auditor, the Legislature may appoint a legislative post-auditor, who shall perform such post-auditing duties as shall be prescribed by law.' be adopted. That Section 4, subsection 6, be adopted as amended. Delegate Warden moved to suspend Rule 27 so that Section 1, subsection 1, could be reconsidered. Motion failed to carry. That the committee rise and report and refer the Executive proposal to Style and Drafting. Signed: Graybill, Chairman."

**PRESIDENT GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move the adoption of the Committee of the Whole report.

**PRESIDENT GRAYBILL:** All those in favor of adopting the Committee of the Whole report, please say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**PRESIDENT GRAYBILL:** The Chair will take a division on that. All in favor, say Aye—vote Aye on the voting machines; and all opposed, vote No. Has every delegate voted? Does any delegate wish to change his vote? Very well. The Chair will close the vote. 66 having voted Aye and 2 voting No, the Committee of the Whole report will be adopted, and the Chair will refer it to Style and Drafting.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move that the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

**PRESIDENT GRAYBILL:** You've heard the motion to move the Convention back into Committee of the Whole. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No.

(No response)

**PRESIDENT GRAYBILL:** Very well. The motion is adopted. We'll be in General Orders in Committee of the Whole on the Legislative Article. Mr. Brown will take the Chair.

(Committee of the Whole chairmanship assumed by Mr. Brown)

**CHAIRMAN BROWN:** Delegates, the next order is the consideration of the Judiciary. We've talked to the minority and the majority people on their proposals, and they are five to four on this. If we'd start on the majority proposal, it would become very involved, because the two proposals are very different. So, with the consent of the delegates, we'll have the majority give their reasons for the majority in a short discussion of the same. Then we'll hear the minority, and they will discuss them. And then we would like to have an informal consensus of the delegates as to whether they'd rather go down formally the majority report or the minority report. If there's no objection, we'll have an informal discussion along those lines.

There being no objections, we'll recognize Mr. Holland—we'll recognize Mr. Graybill.

**DELEGATE GRAYBILL:** Mr. Brown, it's been pointed out to me that the rules require that we take up Style and Drafting reports when they are available. And there is a Style and Drafting report available on General Government. I'd like to move that we postpone it until after we've considered the Judiciary.

**CHAIRMAN BROWN:** You've heard the motion of Mr. Graybill. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN BROWN:** Opposed, No.
(No response)

**CHAIRMAN BROWN:** Motion carried.

**DELEGATE GRAYBILL:** Thank you.

**CHAIRMAN BROWN:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman. At this time—I'm not quite sure what the effect of your ruling was. At this time I'll move to suspend Rule 51 at page 22, wherein in Committee of the Whole consideration, committee proposals will be considered, debated and amended by the Committee of the Whole in order of reference and placed on General Orders of the Day. The Committee of the Whole shall debate and adopt, by section, the committee proposal. As Mr. Brown has indicated earlier, there's a majority report here and a minority report. The majority report, I think, is 33 sections, if I remember correctly. The minority report is 13 sections. And these sections aren't comparable. It would be impossible to amend it back and forth. With the consent of all of the Judiciary Committee, it's our desire to debate generally the—not debate but to inform generally the delegates of the nature of the plans and then ask the delegates to give us a tentative vote and then roll section by section, with either the majority or minority. With that in mind, I'll move that that rule be suspended for this debate.

**CHAIRMAN BROWN:** You've heard the motion of Mr. Holland. With no further discussion, will all in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN BROWN:** Opposed, No.
(No response)

**CHAIRMAN BROWN:** The Ayes have it. Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman. The committee was a nine-man-and-woman committee. The majority plan was adopted by five people, including me as Chairman. The minority—The other movers on the majority side are Mr. Aronow, Mr. Schiltz, Mr. Eskildsen and Mr. Hanson. Minority plan was, in large part, written by Mr. Berg. He, with the other delegates, I expect, will discuss his plan. He was joined in the minority by Mrs. Bowman, Mrs. Pemberton and Mr. Melvin. Basically, what the majority has done is take the Judicial Article as it now is in the present Constitution, largely readopted it, except in such places as we felt there was a need for a change. The minority, on the other hand, have completely rewritten—made a brand-new Judicial Article. While it contains some things that are in the present article, it's an entirely new language and new sections. Before we get into debate—I've taken certain positions in this Convention. I've voted against some people's pet proposals, and I want you to know that I've been thinking it over, and I was dead wrong. And if you can bring your motions up on a reconsideration, I'll vote with you the next time. (Laughter) I think I'm going to have to pay through the nose for some of the things I've done. Many of the delegates here have spoken to me about the—and I think it's covered in the minority plan, in their comments. They have a very short, brief plan. It has 13 sections, which I hope is unlucky, but without any question, is quite brief and quite concise. In page 46 of the comments—Mr. Berg and the other members of the committee make this statement. "Every delegate in this Convention was requested by some of the electorate to assure brevity and simplicity in any constitutional revision, so that all could understand." Now, I didn't run over in Bozeman, but I didn't have—one of my constituents said, "Dave, when you go over there, be brief." Some of them told me to keep my mouth shut, but they didn't say anything about being brief. And maybe it is a good thing and maybe it isn't, but there's no question that theirs are brief. I suppose the model for brief constitutions is the United States Constitution, which is about as brief as you can get. And I know the United States Constitution has always been ranked up there with motherhood and apple pie, as one of the untouchables. But I'm going to say something critical about it. It's too brief, and it's too short. It's the type of constitution that, in 1890, nine judges got together and decided that separate and equal facilities satisfied the same constitution, and in 1950, in the Brown case, they got together and decided that separate and equal facilities aren't good. And in the early days of the New Deal, when we had a conservative court, as the measures were cranked out by the Democrats, time after time they were ruled unconstitutional. And although President Roosevelt was accused of trying to pack it, he never got to. But as the resignations and deaths changed the complexion of the court, practically the same laws would come back and would be found constitutional under the same old constitution. Now, there's one thing about being brief—you just don't do the job, in my estimation. When you have a constitutional provision, the reservoir of powers are with the people and, naturally, to have a functioning society, you're going to have to give some powers to the Legislature and some to the court and some to the Executive. But you only want to give them so much power as you need to function, to keep our society running. In my estimation, we've got to be very careful of our reservoir of powers. And when we do give a power, I think we should fence it in. I think we should make it very clear what it is, and make it very clear we don't want to give up any more power to these bodies than we intend to. And if we have to use a double negative to let these people know that the people are retaining the power, I don't see anything the matter with it. So I don't think brevity is quite as important as some other delegates. I'd way sooner say "No" in clear and distinguished long sentences than to leave any doubt about whether I was saying them. Now, I want to come to the basic differences between the two plans. In the majority, as I say, we took the old constitution, heard our testimony, decided there were some places that needed some revision, and made some revision. The minority has written an entirely new constitution. Now, the problem with writing an entirely new constitution—that is in the Judicial Article—I think was dramatically shown to us in the Montana Plan. I don't know if all of you have ever read this, but it was distributed to everyone early in the game. This was written—the Montana Citizens Conference for Court Improvement Plan—but it was written by the law school professors. And three of them came up and spoke to us. Dean Sullivan, a fine student of the law; Professor Mason, who I've always respected as having the finest legal mind in the state and I still respect him; Mr. Crowley, who is a very excellent man—and in collaboration, they wrote this. And when we got up here and asked them the questions about this plan, there were so many holes in it, so many loopholes, so many things that nobody in the committee wanted, that to this day, there isn't one supporter for the Montana Plan who's supporting it. The supporters of Montana Plan have all gone over with Mr. Berg's plan. Now, the problem is that when you write a constitution, you're not like that man that's in that commercial that went into the restaurant, and he said to the waiter, "What is that?" "Try it, you'll like it." "But, what is it first?" "Try it, you'll like it." "But, what is it?" "Try it, you'll like it." And, he said, "I ate it and I thought I was going to die. So I took two Alka Seltzers." The problem with adopting the minority plan, they don't have any Alka Seltzers. Now—you know, my candidate for the fool of the year was the man who proved that the parachute was a safe invention, because he took an awful chance. And when you take a brand-new Judiciary Article that has never been tried in any state, that has been written by Mr. Berg, and I have great respect for Mr. Berg—he's written this plan; he's said, "All right, here it is"—but you don't have any Alka Seltzers, we don't know for sure if the parachute is going to open, but try it out because it's free and it's concise and it must be better. Now, I say to you, for 73 years we've had the Judicial Article that the majority is submitting to you. This has been tried; it has been found wanting in certain respects. We have—as I've stated, we've made certain changes in this, but they are changes that were brought to our attention by all of the witnesses we heard and which we tried to correct. Now, get down to the basic differences. The majority plan—we provide for the election of the judges, both District and Supreme Court. Minority plan provides for the appointment of judges. In the majority plan, we retained the justice of the peace. The minority plan does not do so. In the majority plan, we continue to elect the clerk of the Supreme Court. The minority appoints it. In the majority plan, we do not give the court any rulemaking power. The minority plan does something, and I'm not quite clear what it is, but I'm sure Mr. Berg will be able to explain to you what he means by the rulemaking plan that is incorporated in there. In the majority plan, we provide nothing about this qualification of judges, and the minority plan does. Now first, and I think of primary importance here, is this matter of the election of judges. Mrs. Babcock said it far better than I could about all of the various ramifications about taking these people out of the Constitution, but, you know, the commission did an outstanding job in preparing for us. There's only one thing. They went out and researched and prepared so much material that I personally haven't been able to read it all. Number 11, which is Suffrage and Elections, is an excellently written article, and I do wish that everybody had had the time, and I hope they have read it, because it has some excellent material in it. It traces the history of elections in not only the State of Montana, but the United States and even going back to the days of ancient Greece. Everybody didn't always have the right to vote. Back in the time shortly after the Revolution, some of these states had requirements. A man had to own land; a man had to have so much money; we had the poll tax; of course, women couldn't vote; we had disqualifications of Negroes, in effect, and Indians. All of this has been now fought down. First, a man now doesn't have to own property. That was one of the first to go. The second thing that went was, of course, the Nineteenth Amendment. Women had the privilege. Then we had the amendments for color being a bar, and, of course, artificial barriers were put there and it's just been within the last few years that that has gone. And just within the last year, I think, the age for voting has now come down to 18. We're coming to the point where actually all of the people can now speak by vote, but now we meet in Convention. We've given all these people their vote and we start out by saying, "all right, you've got the vote, but we're going to take away the offices you're going to vote for." And I think this is basically wrong. I think it's a step backwards. I think I've made myself clear right along, that I consider this vote an extremely important constitutional weapon. It's the only one the average citizen has. So—I very, very much feel that the election of judges are something which is vital to this Constitution. Back in the days after the Revolution, most of the judges—as a matter of fact, I think in nearly every state the judges were appointed in some manner, many times for life. Back about 1820 or thereabouts, every time a Legislature would do anything that was liberal, the courts would find some precedence to throw it out on. And they speak of it, I think, as the Jacksonian Revolution, where the people got so sick of the courts being reactionary, they went out and provided for election of judges. And most of the states, from then on in and right now, have provided for the election of judges. North Dakota, I saw the other day, resisted the effort for the appointment of judges. But, within the last few years, there's been a rash of attempts to take the election of the judges away from the people and go to the appointive system. Now, so you get a little background on this. This is being pushed in large measure by what they call the American Judicature Society, which one of the officers came out and testified before our committee. Now, the American Judicature Society, in case some of you people aren't familiar with it, is a—bears the same relationship to the American Bar Association as the Anaconda Building Supply Company does to the Anaconda Company in this state. They are one and the same, just a different branch. Now, they have been going around to the various state constitutions and to the various organizations, attempting to convince the people of the United States that they're not smart enough to vote for judges. And it's only us lawyers that are smart enough to have this power. Now, I don't really agree with the American Judicature Society. I think, without any question, that, when we do get down to elect, we pick a superior judge. The minority, I think felt—originally, in the Montana Plan, it was just a straight selection of judges with a confirmation election without an opponent. They just felt that would be too bitter a pill for this Convention to swallow. So they made some vital changes in it. They say when there is a vacancy, there will be merit selection. That's the appointment. But the next term, the man can have a contested election and that thereafter he will have a uncontested election. Besides that, it provides for confirmation of that judge by the Senate. Now, what have they done? They've provided for confirmation; they've provided for elections and elections. Why, in God's green earth, don't they just provide for an election? Because the key issue is, the minority wants the appointment of judges by a select committee. It comes down to that. Now that pill, as I say, was too bitter to swallow. So now, they sugarcoat the pill so you don't taste it. They provide for confirmation by the Senate. That is one layer of signature. They provide for a contested election afterwards. That's another layer of signature. Then they provide for an election every four years. That's another layer. The only trouble with the sugarcoated pill, now, is that it's too big to swallow. It's as big as a baseball, because—why would you do all of this if you really thought that the important thing wasn't to convince this body that they should vote for a constitution with an appointed judge? This is the whole idea behind the thing. I submit to you that the people of this state want to elect their judges and, if we come out of here with an appointive system, that this thing alone, in my estimation, could bring down the whole Constitution. In the slip which was distributed yesterday, I believe, about the various news items—distributed on February 25th—on the third page—and I'll tell you, I had nothing to do with this poll—on the third page, "University Class Polls People on Con Con Issues." It states this: "Between February 7th and February 22nd, students in a political science class at the University of Montana, under the supervision of Dr. Robert E. Engle, surveyed 189 registered voters in Missoula to determine their attitudes toward certain Constitutional Convention issues. And among the things was this: Should judges for the Supreme Court and district courts be appointed by the Governor, rather than by election as at present? Yes, 43; No, 125. If this poll were accurately conducted, and I certainly have no reason to think it wasn't, you're flying in the face of a three-to-one majority. Now, that's what the people think. Now, let's get down to what the lawyers think about it, because the Montana Bar Association President came up here and testified in its behalf. And while he didn't poll his organizations, his Executive Committee was in favor of the Montana Plan. And yesterday, there was a letter addressed to Mr. David Holland, Chairman, Judiciary Committee, from the Montana Student Bar Association, February 24, 1972. Now, that letter wasn't sent to me; it was sent to Catherine Pemberton. But at the request of some of the minority, this was printed and placed on your desks. And they found out down there that the law students at the University were for the majority plan—that would be the one I'm on, 16—and for the minority, 67. All of which, I suppose, is to convince you that—overwhelmingly that somebody's in favor of the minority plan, anyhow. I didn't give that all the big weight that evidently some of the minority did, because we run into these law students all the time. And when they go to work in our office, we know they really know the law, but we don't send them up to the Supreme Court of the United States to argue that first day. Generally, we send them up to file some papers. And about the first five or six times we send them to file papers, we send a stenographer with them so they don't get lost. (Laughter) And it's only about four or five years later that they start going up and telling the Supreme Court their business. Now, let's get to what the lawyers of the State of Montana think. At the request of the full committee, the lawyers were polled. We used the law school list. And the lawyers of the State of Montana—this would include both practicing and nonpracticing lawyers, by the way—voted for the election of Supreme Court judges by a margin of 256 to 241. They voted for the election of District Court judges 253 to 237. Now then another organization was polled—that's called the Montana Trial Lawyers, and I'm a member of that organization so, of course, I think it's more significant because I'm a member of it—but there's one thing about the Montana Trial Lawyers: they all make their living in what we lawyers romantically call "the pit". That is, they're in court constantly. That is the way they make their living, trying cases in court. And you better believe that when you do that, you know all about judges. All the judges in the state always sit up like Mr. Brown does, right up there on an elevated platform; and whenever my head goes back, because I'm always looking at judges, it's "yes, sir" and "yes, your honor", because I'm telling you, I want a good judge up there because this is where, together with many of the lawyers here in the Convention, I make my living and I'm real interested in getting a good lawyer to be judge. And I'll tell you what the lawyers that make their living in the pit think; they voted for the election of the Supreme Court justices 78 to 34 and for the election of District Court judges—and those are the judges they see every day—82 to 29. So we got the law students for the minority plan; we got the general lawyers, whether they make their living in court or not, are for the election of judges; and we got the trial lawyers nearly two to one for the election of judges. And more important than any of those three, we've got the citizens of the State of Montana, who don't want to be put down as not being intelligent enough to pick their own judges. They want to vote for them. And I suggest to you that, with everyone but the law students, we should go ahead with the elections. Now, the second main difference is in the JP. Everybody who testified or who was polled were near unanimous for the abolition of the justice of the peace from the Constitution. When I came over here, I had considered the matter a good deal. As a matter of fact, I served on the Montana Bar Committee involved in the matter for many years. And I was more or less inclined to think they should come out. But as we begin to get some testimony from some of these lawyers from the small towns—and some of the JPs from the small towns—I begin to appreciate more and more that there's just no way that this system of ours in the state can work out without a JP or the equivalent of him. Whether you call him a magistrate or whether you call him Chief Justice of the Supreme Court, we still got to have somebody out there in each county to take care of the JP function. So we left him in, but not left him in the way he is now. The present law, as it is interpreted, requires that there be at least two townships in each county and that there must be—there must be a minimum—there must be two judges for each township. Now, in a small—I'm speaking small in area—county like Silver Bow County, that means we got four judges. And frankly speaking, that's too many, because I don't think they have that much workload, but the Constitution says that we shall have them. So that's the first thing we changed was the requirement on JPs. Now we require only one in each county. There can be more if circumstances dictate, but we still make that basic requirement. The second thing we have done is we removed the limits from his jurisdiction. It used to be, in the old Constitution, (Inaudible)—used to be that he had a limit of $300 on the cases. This prohibited the JP from conducting what we call the small claims court, where the limit might be raised to a 1,000 or even $3,000 and which citizens without lawyers can go in and get the smaller matters litigated. So, we've taken those jurisdictional limits off, so even though we still call them JPs, he can actually be a small claims court. We've also made it clear in the Constitution that we expect that lawyers can fulfill the position and practice in other levels of court. This way, we think the qualifications can be brought up. Now, in your small counties, there just aren't that many lawyers, and we have provided that. We haven't limited it just to lawyers occupying the position, but we have included and upgraded position by requiring training. So, while we've kept the JPs, they are so modified that I don't think that they're going to be the same court, and we hope we've taken the abuses out of the system. The third major difference between the clerk of the Supreme Court—between the two plans—are we provide for the election of the clerk of the Supreme Court, which is consistent with our whole article. They provide for the appointment. Now, for some reason, and I never have had it explained to me, but for some reason, they provide for the appointment of the clerk of the Supreme Court but provide for the election of the clerk of the District Court. We provide for the election of both. I think it's important we continue to elect them. The third thing is on the problem of rulemaking power, which is covered in the minority article. Now, when you start talking about a rulemaking power, you start talking about a court making rules, a court making law. Now, when a Legislature makes law, as you well know, we have the Executive to veto it. And if the Executive doesn't veto it, we have the courts, then, to look it over and say, "You made a law here which is unconstitutional. It shall not be enforced." So, when the Legislature makes law, it has those safeguards. When the courts make law, there's no Executive to veto it. The courts decide whether it's constitutional, and we're back to the old system where the court is throwing the pitch and then running back behind the plate and saying, "Strike one." It just doesn't belong in there. I'm not familiar with the system at all. Now, I'm not against the Supreme Court having some rulemaking power, but I want it the way it is now under the present Constitution. The way it is under the present Constitution, the Legislature passes a law delegating to the courts the right to make rules. The Legislature retains the right to take that power back or to say to the court, "You've gone too far; this rule will not be enforced." So now, we have the safeguard. The Legislature has the power to let the court do the work, but they supervise it and can, in effect, veto it. This is the rule the majority likes, and this is the way it is in the present Constitution and it works out just fine. I really don't know about this, because part of the problem I have with the minority plan is they've written it up, and I'm not real clear what they mean by it. This is what I mean about fooling around—not fooling around—about taking on the task of writing a whole new Judicial Article, because it has never been interpreted, and what is it going to mean? This is what they say in Section 1 on page 40. "The Supreme Court shall have such power to make rules of procedure as may be provided by law." Now, what does that mean? I'm not sure. Is the court—and they're the ones that are going to interpret it; the Legislature is not going to interpret it, and the Executive's not going to interpret it—does that mean that they have absolute authority to make rules? Or does that mean that they can make the rules that the Legislature tells them they can make? Now, there's no question under the present Constitution; no doubt about the fact at all, that the Legislature can and has delegated that power to the court. If this is a good rule, why not leave it like the present Constitution? But why put this in, that I think raises a very difficult question of interpretation? And as they say in the game, "Why open this can of worms?" And then, we go to the previous sentence above there. "The Supreme Court may make rules for the practice of law." Now, what are rules for practice of law? Does that mean that they will have the authority to discipline lawyers, to decide which men shall be allowed to practice law? Or does that mean that they will have the supervision of lawyers, tell them what fees they will get? Well, I don't know what it means, but it certainly has me extremely concerned, because I like to know exactly what somebody means when they put it in there. We have the matter of disqualification of judges. Now, to fill you in on disqualification of judges, there's nothing in the original Constitution about disqualification of judges. There's no need to be. Back in time of the war of the copper kings, the Anaconda Company shut down the State of Montana until such time as the Legislature came over and passed a law. They had to call a special session. They came over here and passed a law so they could disqualify Judge Clancy. They shut down Butte, 10,000 men out of work. And the Governor held out for a month, but the pressure got too big, and he called the Legislature over. They went right through the hoop, they passed the law for the Anaconda Company. And that law was declared constitutional. In other words, this is an authority the Legislature has. So, I say to you, if the Legislature already has this power, then why are we going to write a Judicial Article including the disqualification of judges? Because we have a disqualification of judges. The statute's clear. It has been interpreted many times, and why fool with it? Well, I just don't know, but in Section 9, and I'll read this to you—"The Legislature shall provide for disqualification of judges at any one or all of the inferior trial and appellate court levels." Now, that's mandatory; they have to provide for it. Now, what do they mean by that? Let's go to their comments and let's see what they mean by it. They say this. "It is our intention that the basic right of a litigant to be assured an impartial trial at all levels of the court. It is noted that although disqualification procedures for lower courts is provided for in the statutes, the Supreme Court has remained exempt. By this provision, the Supreme Court judges will also be subject to similar requirements." Now, does this mean that the Legislature must now bring in a statute that all of the judges that you feel are—should be disqualified? In other words, the entire Supreme Court could be disqualified? Does it mean that every District Court judge can be disqualified? I don't know what it means, and this is what I protest about writing a new Judicial Article. Because, if this is passed, it'll be a subject of fruitful litigation for the next 50 years till we finally find out where we're at. Now, on the majority side, we had some real problems about this. Go over and take a look at our District Court jurisdiction, our Number 9. It's a long, windy, full paged—over a page article. And we got in there, and we've got some purists on our side, and they said, "Oh, let's get rid of all that junk." I don't like to get rid of all that junk, because it has been working real well for 73 years. We've heard testimony from so many witnesses that I lost count, and not one person came in and said there was anything wrong with the District Court jurisdiction. But I'm willing to go along. All right. So, we took the Montana Plan. They have something in there about justiciable benches. They got a nice short one like this. And I said, "Well, let's call the professors down at the law school and find out if we're safe, because I sure don't want to be facing a whole new battle on whether a court has jurisdiction of this or court has jurisdiction of that." So, we called Professor Mason. He said, "Don't worry, Dave, don't worry—fully defined legal term—keep things just the same way—and it's nice and short." Fine, we're going to incorporate it in. And then, you know, the first thing, Mr. Berg went out and did a little research, which I should have done—the first thing, Mr. Berg went out, did a little bit of research and, by gosh, here's two state courts that have held that this thing—nobody knows what it means and it's not a well-defined legal term, and we darn well were liable to get things mixed up if we went ahead and fought it out. Now, I say to you, if none of the witnesses want things changed on a particular article, then even though it is long, decide to leave it alone. And I'm saying to you that if the minority proposal is finally adopted by this body, you're taking a whole new keg of nails on. I don't know how the court's going to interpret it, and I know that Mr. Berg thinks he does, but, by gosh, I've seen courts do odd things. And I say you're way better off to stick with the old tried and true. There's just one more thing I want to cover about this. We had a good many protesting delegates who thought that the courts weren't all they should be, and the majority contains several members who think that. And their kicks were that out of 28 district judges in this state, 19 have been appointed by the Governor—unfettered appointment, he didn't have it confirmed by anyone—and those people have been continued in office. In other words, even if we have an election, it's pretty tough to beat a judge. The same thing is true out of four out of five of the Supreme Court judges. And another evil—I don't know if it's an evil; maybe it's a good thing, I don't know—but, in any event, we had one situation one time where a man died or resigned. A Supreme Court justice was appointed. He'd failed at the previous election, but, of course, he was in and he wasn't going to get beat, and he was reelected a couple of times. But he wanted to retire, but he didn't retire. He didn't say, "Step aside and let's have an election." He ran, and then about a year or so later, he had a Governor from his own party—although he's a nonpartisan and the Governor was of a different party—but anyhow, the Governor from his own party—and then he resigned and then the Governor got to put somebody else in there, and that man has been kept in office. And it was a real evil. And as a matter of fact, some of the majority said, "Well, we agree with elections, but the courts just aren't up to standard." What are you going to do about it? Well, we thought about a lot of methods. But finally, we came down to this. It's covered in a little different language, but what we've done is said, "Fine. If there's a vacant seat, the Governor can fill it, but he can't fill it permanently." Any man who takes the job can't be a candidate to succeed himself. Now, we had some protest about that. They said, "Where will you ever get anyone?" Well, I know of two circumstances where that happened and they didn't have any trouble getting anyone at all. And if they got a vacant seat in the Supreme Court, I'll guarantee to have 8 or 10 lawyers from Butte over here any time, even if it's only for a few months, for the honor of filling a position on the Supreme Court. The same thing on the District Court level. They're going to say it's a big hurdle, and I'll guarantee you, it's not. And, yes, they will have a weak man, somebody who goes in there just to fill out the term, but they won't have an appointive court system, and this is what—this is what we were worried about. Because, the election of judges—generally, you'll get somebody who is a politician. This is a big kick with a lot of people. But the basic attributes of a politician are actually pretty good for a judge. Generally, they have to like people, and I like judges that like people. Generally, they have to be courteous, and I like judges that are courteous. Generally, what the trial lawyers do, they go in to those judges, and they've got an important case—or they have a case—all cases are important, of course. They're going to look up the law. They're going to see that that law is delivered by a method, by what we call the trial brief, to the judge. When we go to the Supreme Court—that's what we do—we write briefs up, we argue the case. Basically, what you want is a fair man who can comprehend what the law is and hope he has enough human understanding to get by. Because they talk about this federal court system, but when you see some of the tyrants that get on the bench under that system—fortunately, under our system here in Montana, we don't have them now—but we did have them. We had them that levied the $1,000 fine. We had one one time who appointed a lawyer to serve without fee to represent a defendant in a criminal case. The case was to start Monday. The lawyer came down with acute attack of appendicitis, was in the hospital, and was operated on Saturday. He was in the hospital, he didn't show up for trial. That Monday morning, he got fined for contempt of court. And I'll tell you, if that judge had ever come up for a vote, he wouldn't have been there very long. But he was under the federal system and was appointed. And we submit to you that we have made important changes in the Judicial Article in the majority report. But we've made them with the spirit—these people have come to us and said, "This is wrong", and then we have gone after the specific cause that they're wrong. We think this is the way the Constitution should be handled. The minority report—and these people are all good, sincere, hard-working people. They honestly feel and believe in their position. They take a different path. They rewrite the Judicial Article, we feel, eliminating many important safeguards. But please don't turn down the majority report because it has more sections than the other. Read it, examine it, determine between these two plans, upon the merits. Thank you very much.

**CHAIRMAN BROWN:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Brown. I move we recess until 1:15.

**CHAIRMAN BROWN:** All in favor, Aye.

**DELEGATES:** Aye.

**CHAIRMAN BROWN:** Opposed, No.
(No response)

**CHAIRMAN BROWN:** Carried.

(Convention recessed at 11:55 a.m.—reconvened at 1:25 p.m.)

**CHAIRMAN GRAYBILL:** The Committee will be in session. Before recess, we were discussing the two Judiciary proposals with the idea that we would take a tentative vote after the discussion. I believe Mr. Holland had finished and Mr. Berg—

Mr. Holland, are you finished?

**DELEGATE HOLLAND:** I am, Mr. President, except for one thing. Both the majority and the minority are quite willing to answer questions about their plan. We think it would be better if, in orderly presentation, if the minority proposal is fully presented and then invite what questions the delegates may have.

**CHAIRMAN GRAYBILL:** Right. Ladies and gentlemen, after Mr. Berg finishes his presentation, we'll have questions and discussion and debate if necessary before this motion. Very well.

Mr. Berg.

**DELEGATE BERG:** All right. Mr. President, I have asked Mrs. Pemberton to give us a just short statement, and I would yield for that purpose.

**CHAIRMAN GRAYBILL:** Mrs. Pemberton.

**DELEGATE PEMBERTON:** Mr. President. Thank you, Mr. Berg. This is a day that I've looked forward to for quite a long time. Is this coming through okay up there? Good. I don't want you to miss a word. (Laughter) In the first place, it's a very great pleasure to share Mr. Holland with you. (Laughter) He hasn't exactly been under cover since January the 16th. I started to take notes this morning, and then I realized there was nothing new that we hadn't heard for the past few weeks. So, evidently, however, my friend over here hasn't had time to read the papers, and on the morning of February 24th, last Thursday, in the headlines of the Great Falls *Tribune*, in a several-column, well-written news story, was this story which was: "Court Improvement Possible Besides Death of the Montana Plan." He referred to it for quite some time this morning, and I presume he had not had time to see this. In a few minutes, I'll have it put on his desk with my compliments. The way this came about, I think that the delegation deserves a little explanation and I would be happy to give it. The Montana Citizens for Court Improvement with—the Third Citizens' Conference that was held in Missoula in October as an information seminar because of the Constitutional

Convention was sponsored by Montana Citizens on Court Improvement. It was not looking toward anything at that time except the Montana Constitutional Convention, and people were invited to do this at that time. There were rather baseless remarks and out of order, I felt, this morning in referring to this group of dedicated people looking toward court improvement in Montana as, in their plans, when they were referred to as the Sullivan Plan. I thought it was a vindictive attack on a fine gentleman. I had not ever had the pleasure of meeting this man until last March at the National Conference of the Judiciary in Williamsburg, Virginia, and this—at that time, this Convention was planned and everyone was making plans toward presenting different things for the information of the delegates. And this plan was—this conference was planned at that time, and the people who planned it had been working toward court improvement since 1966 at the invitation of the American Bar Association, the Montana Judges Association, the Montana Bar Association, the School of Law at the University of Montana, and the American Judicature Society. We had picked this up at their invitation, 100 citizens such as these laymen, across the State of Montana, and looked toward court improvement from that time on. When we picked up a challenge that the profession felt that they could not do from within. This was presented to us in a 3-day conference at the expense of the delegates, who were invited to be there. It was a courteous thing to do. We looked at it, and after looking at it for five years, studying it, and going into different states, comparing it with different plans, such as you've had the opportunity to do here, we came up with a comprehensive plan which we felt looked toward court improvement. If this did not please this delegation, that is up to you. I, personally, am committed not toward anything specific except court improvement. With that, as I looked and sat on the ringside seat of a Judicial Committee within this Convention and could look toward two groups planning the Judiciary Article of this Constitution, I found which way I could go, which way would point toward court improvement. I do not have to get permission from anyone; however, I have consulted many, many authorities. I felt they were very authoritative in their field, with great background. I came out of this not as an attorney, and I never will be. I am a layman, and I am very pleased to have worked for court improvement, and I still feel I am when I looked at the plan of the minority group and the report that they are going to give to this Convention in a few minutes. It has a number of things that you must give very serious attention to. I do not feel that the majority has gone forward or has court improvement within its article. One of the members at one time said, "We will write an article for Montana. We will not take it from other states"—we will not do this and we will not do that with it. I feel that the minority group has written a very good article, and it is written for Montana. There are things in it that are not written for any other state. It is written for Montana, and you will not find them—some of them—to make a comparison, and they are good and they will last. And they look forward; they do not look backwards. And I would recommend them. I would like to describe the American Judicature Society, for just a moment, as long as it was referred to this morning. This is a group of a number of lawyers, judges and laymen in 50 states, in Canada and 43 other countries of the world. It was founded in 1913 to promote the efficient administration of justice. There are thousands of members who belong to this. I am not a member, but they have given us great help and great assistance in looking toward court improvement and the mechanics of putting on these different conferences which have always been open to the press and supported by many people across the State of Montana. We have been directed by a gentleman who lives in this 26-mile area of Montana and keeps telling me that this is different than any other place in Montana. I would like to believe that. I know some very fine people who live there also. I live on a 10,000—I represent a 10,000-square-mile area of Montana. As compared with some of the other areas of 57,000 voters, we probably represent around 6,000. I believe my other delegate from District 1 would say that's about right. This is not necessarily a question of land versus people, of cities versus ranches. I think it's a question of all Montana, civic leaders representing the state as a whole, and I would like to also think that this is opportunity time for Montana, which I have stated it before, and that you look toward court improvement with me. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. President, members of the delegation, Mr. Holland. You know when you start the trial of a lawsuit and you're arguing to the jury, you always start it out by saying, "May it please the court, counsel for the plaintiff, counsel for the defendant", and then "Ladies and gentlemen." The way that we are presenting this Judicial Article today is something in the measure of a final argument as it would be conducted in court, and that's altogether appropriate when you're discussing the Judiciary and the Judicial Article in Montana. But I am reminded now, in the beginning, of an admonition my mother gave me years ago. She used to say, "I wonder if that boy will ever learn to talk." And then later, and forever, she said, "Will he ever learn to say anything?" (Laughter) Now, as I listened to Mr. Holland this morning, I was reminded of my mother's admonition, much as he thinks of his father or grandfather, and I was impressed with this thought, that he spent so much time on the minority viewpoint of the Judicial Article that it must, for that simple reason, have some merit. And it's that merit that I want to discuss with you as briefly and as concisely as I can. But I also want to make this observation. There was considerable criticism this morning of the brevity and perhaps the so-called novelty of the minority plan. I take credit, if credit is due, for the brevity, and I would remind you that I was astonished this morning to hear the United States Constitution, and particularly the judicial portion, the Judicial Article of that Constitution, also accused of brevity, which I have always thought was the mark of fundamental, good constitutional writing. And if the minority article suffers from brevity, so be it. I'm proud of it. Let's start now with Section 1, and I'm going to be looking at page 46 of the minority report. It begins with the judicial power. It vests the judicial power in the Supreme Court and in the district courts and then, just like the United States Constitution, and in such other courts as may be provided by law. It differs from the majority report in this significant manner: it does not mention justices of the peace. Why? Before our committee, Judge Gardner Brownlee of Missoula spoke as the spokesman for all justices of the peace, and in the course of his comments, he said that insofar as the justices of the peace of the State of Montana are concerned, they do not care whether they are or are not mentioned in the Constitution and, in particular, in Article I. Let me say this to you, that I have examined, as apparently Mr. Holland has not, this volume, Volume XIV, on the Judiciary. And I'll call your attention to pages 70 to 75, which deals and sets forth all of the states of the United States which, within the last five years, like us, are considering the elimination of the justice of the peace as a constitutional court. If you will examine that, there are approximately 30 states listed, and I count 25 of them who, within the last 5 to 10 years, have done one of two things: they have either specifically abolished justice courts or they have eliminated them from the Constitution. Now, I think that's pretty reasonable authority to look to in the drafting of our Constitution. But we're not alone in looking to other states for precedent in this regard. Every poll taken that I know of overwhelmingly suggest that we eliminate justices of the peace from the Constitution. For example, the same poll that Mr. Holland referred to this morning with regard to the justices of the peace, which he overlooked in his argument—the same poll conducted of all lawyers by the Judicial Committee of this Convention—the report came back 66 lawyers in favor of retaining justice courts as constitutional courts, 415 opposed. Mr. Holland takes great pride in his membership in the Trial Lawyers Association, and the poll which they took posed the question just a little more differently. Instead of asking whether they should be simply continued as a constitutional court, the poll said, "Should justices of the court be abolished?" Now, these are the so-called lawyers in the pit, of which I take pride in being one, and they say: 73, should abolish; 38, continue. Now, if you are on the Judiciary Committee in this Convention and you're confronted with that sort of polls, taken by lawyers, people who work in these courts all of the time, what would your conclusion be as to whether they should be or should not be listed as a constitutional court? I take it that you would agree with the minority and that you would not include them as a constitutional court in Section 1 of your Constitution. The minority has not done so; the majority has in spite of all of this disapproval that was before the committee. All right, let's go on then. Well, let's not go on to Section 2. Let's talk also about the treatment given to the justice courts by other provisions in this minority and compare it with the majority. Take a look, if you please, at Section 4. It's on page 56. This has reference with regard to the jurisdiction and the powers of district courts. Let me read it to you. I'm sorry, mine's 58—I have a little obliteration on it—it's page 50—50—Section 4. With regard to the power of district courts, it says: "Original jurisdiction of all matters and causes, both civil and criminal, including the power to issue, hear and determine original and remedial writs is vested in the District Court"—now, take note of the next clause—"but distribution of concurrent jurisdiction with other courts may be provided by law." Now, throughout the rest of the minority, we have referred to the methods of qualifications, the terms of judges, the pay of judges in the lower court system. In every instance, it's been left to the Legislature. Now, let's go back and take a look at how the majority so magnificently treats justices of the peace. You will recall that in Article I, they have mentioned them as a constitutional court. Let's take a look, however, at Section 9, on page 20, which has reference with the majority report. Let's take a look at the first sentence in regard to the jurisdiction of the District Court. What does it say? "The District Court shall have original jurisdiction in all cases"—I emphasize the word "all"—"at law and in equity." And then it goes down and it includes all of these various types of actions that are classified as being within that all-inclusive jurisdiction of the District Court. All right, let's go on back here and take a look at what they did to the justice of the peace court, and that's at Section 16, at page 26. What did they do? Go down to line 21. It says, "Justice courts shall have such original jurisdiction within their respective counties as may be prescribed by law." Think about that a minute. In the majority report, all jurisdiction for all cases in law or in equity is exclusively, practically exclusively, vested in the District Court. What's the Legislature got left to give to the Justice Court under that kind of a constitutional provision? Nothing. Very little or nothing. It is a colossal mistake in the writing of a Judicial Article. Now, I'll say this: I've been a little harsh on the majority. They have given to the Justice Court, apparently inferentially only, jurisdiction up to $300 in civil cases. They have done it in a negative way. They have said in their Judicial Article that the District Court has jurisdiction in such actions in controversies which exceed $300. So, presumably, there is room left—and only this much room left—for the Justice Court. Now, we're not talking about the situation as it is today; we're talking about tomorrow; and I suggest to you that you can't find in the majority report, so far as the lower court system is concerned, any room for tomorrow. There's no place left for a small claims court, as I'm sure we would someday like to see in some parts, perhaps all parts, of Montana. No room for that left today in the majority report. But look at the minority report. There is more room there than you can ever imagine in this term that the Legislature may provide concurrent jurisdiction with the District Court in any lower inferior court, and so the Legislature may at any time give to small courts, lower courts, unlimited jurisdiction within, but there is this safeguard at all times and that is that jurisdiction is concurrent. In this, that there is a constitutional court established, a District Court, in which all jurisdiction is vested, and the Legislature may give concurrent jurisdiction to a lower court but not necessarily take it away from the District Court. A more elastic, more flexible system cannot be designed. Under that system, in the minority, so far as jurisdiction is concerned, you may improve and create—you may not only improve the justices of the peace, you may create other courts if you want to; you may have a small claims court, you may have a municipal court, you may have a police court, you may have any kind of a court the Legislature finds necessary in the future. Furthermore, because the justices of the peace are not specifically named in Section 1 of the minority report, that does not mean at all that they have been abolished. To the contrary. Their jurisdiction stays as it is today, but the Legislature may in the future, under our article, do with those courts as time and events require. In my own mind, I think there is great room for improvement in the justice of the peace court. I want to see those courts elevated. I'd like to see them given dignity. I would like to see them trained. Indeed, if I were in the Legislature, operating under such broad powers as we give them in the minority, I would suggest that an academy be established at one of the universities, much similar to what we now do in the case of law enforcement officers, and I would arrange for those justices of the peace to go to that academy annually and be trained and educated in the matters that they deal with, so that when people come before those courts, the law is being interpreted and meted out as it is intended to be by the Legislature. This is improvement. This is the sort of thing that should be done in Montana, and it should not be hamstrung. Dollar limits should not be placed upon it, because the time may come when in Billings or in Great Falls, indeed, even in my hometown of Bozeman, for [when] a municipal court of much broader jurisdiction may very well be required. It may very well enhance the development of justice, and we ought to allow for it here in this Constitution. If you accept the minority report, as I have explained to you from a jurisdictional viewpoint, the power is there. It's in the Legislature; it can be accommodated. Now, one other feature of the minority plan which Mr. Holland overlooked and which I think is of considerable value to the administration of justice in the years to come, and that is the administration of courts. Today, in Montana, we have no system whatever for any kind of administration within the judicial system; and do you know, we're 1 of 13 states—only 13 states left are in such a deplorable condition, from an administrative viewpoint, of judicial affairs. In the majority report there is no mention, none whatever, of administration of the judicial system. But the minority report does accord it, and here again, let me refer to the minority report. I have a little trouble picking my time out. With reference to Section 2—now, I'm looking at page 40. I guess you could look at page 52, or something like that, and find the same thing. Maybe I'd better stick with the comment area on Section 2 of the Supreme Court. It's on page 47—yes, Section 2. Note this—the second sentence—"The Supreme Court may make rules for the practice of law and judicial administration in all courts." Judicial administration in all courts, as I say, has been accommodated in all states but 13, and Montana is 1 of the 13. And of those 13, 2—I think it's Indiana and—I can't offhand—I think, Indiana and Maryland are also considering in constitutional revision to include judicial administration and the centralization of it in the highest court. If they adopt it and we don't, we'll be 1 of 11 left. If we do adopt it, there will only be 10 states left yet not to adopt it. It is an advantage that every state has recognized, apparently from the beginning. It is not even considered in the majority report. I don't expect this judicial administration of the judicial system, centered, as I say, in the Supreme Court, to become a vast bogus [focus] of power. I don't anticipate that there is going to be suddenly employed by the court a court administrator with an elaborate staff. Not at all. I anticipate that this will grow, and grow gradually, and I think that the clerk of the Supreme Court is an adequate arm of the Supreme Court to accommodate this function. You know, when we started to look down and find out how many justices of the peace there are, how many kinds of cases they handle, whether they're civil, whether they're criminal, what results have been obtained in these various courts, we had no place to go except, if you please, to the Highway Patrol office. And, of course, they could only tell us about Highway Patrol cases. Now, that's a deplorable situation in the administration of justice in this state. This is the kind of a problem that needs attention. The minority report accommodates that. It is not going to set up an elaborate court administrator, but it will, through the clerk of the court, if his duties can be prescribed by the clerk of the court, be facilitated, and that's all a constitution should do. We shouldn't spell it out to them, and we haven't. We have enabled it. Now, this is one good reason why we did not elect the clerk of the Supreme Court of Montana; rather, we provide for his appointment. But we also, if you'll note, permit the court to fix his duties, and we have in mind there that among those duties may be administrative centralization of the administration of the court system. And if you are going to have the court system administered by a clerk, it seems to me that clerk should be the court's clerk. Therefore, we provide for his appointment. Moreover, we did not feel that the clerk of the Supreme Court was such a vital office in, particularly—certainly not—excuse me—a policymaking office, but, rather, such a vital policymaking office in this state that it required the electorate to designate him. Let me point this out to you. So far, in this Convention, I have yet to—I have not failed to vote for the election of every state official. I personally believe in the sovereignty of the people. I believe in extending the franchise, but when I get down to the court system and I come to the clerk of the court, I say, "Why?" Who knows anything about the qualifications, much less the duties, of the clerk of the court in the electorate out over the state? I do not think that office is essential in the elective system. For that reason, I have gone along with his appointment by the court, because I believe it will achieve a better administrative system within the court system. That's why we differ from the majority on the method of selection of the clerk of the court. Now, we come to the rulemaking power. Much discussion went on in the committee, much testimony came to us from lawyers regarding this rulemaking power in the Supreme Court. It was significant to us, I'm sure to both majority and minority, that when this poll came back regarding rulemaking power, that many lawyers who felt there should be rulemaking power scratched out rulemaking power insofar as the rules of evidence were concerned. Both the majority and the minority agree that rulemaking power in the field of evidence ought to remain in the Legislature. We felt that there is such a gray line of distinction between substantive and procedural—or perhaps a better word is adjective law—that if that rule—if that field of law is to be changed, it ought to be done by the lawmaking body, the Legislature. So the minority report does not include the power in the court to make rules of evidence. But the minority report does permit the Supreme Court to make rules of procedure. Here, too, however, we guarded that power and said, "as provided by law". Now, this morning, Mr. Holland was inquisitive about that. I don't really mean inquisitive—critical. He doesn't know what the term "as provided by law" means. I do. I know—I know and you know and everyone knows that that means "as provided by the Legislature". We have that provision in this Constitution in practically every article that's been written, and we all understand that that means—"as provided by law" means "as made by the Legislature". And so it is intended by the minority in the rulemaking power. In other words, the rulemaking power as it is set forth in the minority, is circumscribed by legislative control. The Supreme Court, even in rules of procedure, has no power except as it is given to them by law—by the Legislature—and there's nothing new about that. Today, all our Rules of Civil Procedure that we operate under have been promulgated by the Supreme Court under legislation given to it where it was empowered by the Legislature. We change nothing. We leave it as is except we recognize that the court may do it if—and only if—the Legislature so provides. We come now to another issue. I want to get to the election of judges and the manner of selection of judges, but I'd rather take that up at the end. We come to another issue which Mr. Holland also discussed, and by the way, when I refer to Mr. Holland's discussion, bear this in mind: before we argued on this floor, we mutually agreed on what we thought were the major issues within the Judicial Article, so the fact that he discusses it and I discuss it is because we understand each other. We understand these to be the major issues, and we want you to understand them that way, and one of them is the disqualification of judges. Now, it is inherent in the judicial system of the right of disqualification at all levels. No cases tried before a jury without the right of each side to disqualify jurors, with or without cause—you're entitled in a civil case, each side, to four disqualifications of the lay people who sit on juries. This is as old as the judicial system in this country and older, too, because it comes from England. It's with us today. Lord help us if it's not with us tomorrow. Likewise, in the history of the State of Montana, we have always been able to disqualify a justice of the peace in the lower court. We exercise that right so far as the district judge is concerned—always have—and, I predict, always will. The only innovation suggested in the minority report in that regard is that that same right be carried upstairs to the Supreme Court. Why have this right of disqualification? Why do we use that in the judicial system? Why should it be there in any reform or improvement in our court system? Why? I'll tell you why. You, or anyone else, as a litigant are entitled—absolutely entitled—to be assured that you've got an impartial judge sitting up there in judgment of your rights. And if—if you have doubt or you have belief that there is partisanship in the mind of that judicial officer sitting in judgment of your rights, are you—could you ever be satisfied, especially if you lose, that you had the impartial trial the law guarantees? This is the essential reason for the right of disqualification. And I suggest to you—let me put it this way—I have been practicing law, that is, I have been admitted to practice for 30 years. I've been actually practicing something like 25, because of World War II. Now, in all the course of my history, and I think I try as many lawsuits in my area as any lawyer there; I believe I've as much experience in the Supreme Court as any lawyer in this room; and yet in all that time, I have never, ever, filed an affidavit of disqualification on any judge. I hope the day never comes when I feel I will have to. But if I do, I want the right. I want it not for myself, but for my client, who I represent, and for his cause and, most of all, for the cause of justice. Now, these are the reasons why that section is included in the minority report. I have a suggestion about it. If you'll look at it—I can't remember, I think it's Section 9 or 10, relating to the disqualification of judges, and it says "the Legislature shall"—I'm inclined to think that that should be changed to the word "may", but no further, because if this principle of justice as I have just mentioned to you is to be carried out to its logic, then it ought to be included in all courts at all levels. Then, incidentally, this particular section was not of the making of the minority. Indeed, it was suggested to us and brought to us by a lawyer as a proposal, and we in the minority accepted it. I don't know why under the sun the majority didn't do it. Now, let's talk about the real tough, vital issue in the Judiciary, and that's the selection of judges. Today, as you all know, we elect our judges on a nonpartisan ballot. Now, I think I can talk about this issue with some authority, because my father was a district judge for 28 years. He was on the partisan and the nonpartisan ballot, and he stood competitive elections on a number of different occasions. I'm proud, as I'm sure he was, that he survived. But let me tell you, from a judge's viewpoint, that is not an easy ordeal. But we're not really concerned especially about what the judge's viewpoint necessarily is on this. What we're really concerned about is, what are the people's concern in this method of the selection of judiciary? Now, there are about five systems recognized in the United States. There is the pure appointive system whereby the President or the Governor appoints, with the advice and consent of his Senate or his Legislature. That's employed, I think, in about nine states. There is the election of judges on a partisan ballot, and I can't recall the number of states, but it's approximately 12. There is the election of judges, as we do it in Montana, on a nonpartisan ballot; that's about 17. There is another appointive system used, and that is used, I think, in five states; and in those five, the judges are appointed not by the Governor but by the Legislature. And the final one is the so-called merit system, and that's employed in about nine states. It is the most recent development in judicial history, and it has had, perhaps of all renovations and changes made, it has been to that system that states have most recently turned. The minority—let me say this—I'm sure that in the mind of every majority member, no other consideration other than the election of judges was even thought about. The minority did. And we had before us what's called—and it's dead now—the Montana Plan. And under the Montana Plan it provided for this: it provided that there would be a committee or a commission, if you please, created in the Montana Plan by the Constitution, its composition to be determined by the Legislature, and this committee would select nominees from which the Governor must make an appointment, and the appointee would then become judge, subject only to acceptance or rejection at every general election at the end—and termination of each term of office. This was the Montana Plan. It is taken, basically, from what is known as the "Missouri Plan of Selection". It is used in other states, but in Montana, we, at least in the minority, did not feel that we should ever divorce the Judiciary from the electorate. We feel some kind of elective process is essential in the selection of the Judiciary, as well as the selection of other officers. And the majority said to us, "Well, if you can draw a blue-ribbon committee, a perfect committee, that will assure to us purity in the nomination of these judges, we'd even go along, I think, with the Montana Plan." We tried. We agree with majority that we, as a Constitutional Convention, or at least as a Judiciary Committee, can't draw that blue-ribbon, perfect, pure committee. We weren't struck with that divine providence that it takes to make humans perfect, and so we said to ourselves, "We don't dare lock into this Constitution the exact composition, method of operation, of this so-called nominating commission." Under these circumstances, we said, the better course of wisdom is to let it go to the Legislature. Now, we're not really passing the buck, and I'll tell you why. Because, if errors are made and it develops in the operation of this nominating commission that mistakes have been made and imperfections are developing, it can be corrected without destroying the entire system. And so we left it to the Legislature and in our comments—I think it's Section 7—we gave some observations to the Legislature as to how we thought it might conceivably be done. Number 1, we said, "It should be a widely geographically distributed committee. It must be nonpartisan in character. No member may hold public office, either public office under the government or a political office in a political party." The object here was to insure as nearly as possible that this committee will not be dominated by one party or the other. Likewise, we were concerned about this committee being dominated by some vested interest, so we enlarged it. Now, these are suggestions, and you'll find them in the comments, and we thought the best possible arrangement would be that they be geographically distributed in the 18 Judicial Districts of the state, not only for the purpose of getting—by dispersement we lose concentration—but also we felt that there should be some member from each Judicial District in the event of vacancy in the office of a judge in that district, somebody who knows the local situation personally. That's why we made that suggestion. Now, this isn't to be written into the Constitution, as I say, but they are guidelines given to the Legislature should you adopt the minority plan. But we weren't satisfied, the minority wasn't, with just a nominating commission. We weren't satisfied that thereby we erased all politics or we erased all vested interests in the selection of judges, so we took it one step further. We seized and accepted the idea of the federal government that appointments of judges will be confirmed by the Senate. So we made one more hurdle, one more step in the gamut for this appointee to go through. Now he is—he's been selected by a nominating committee, the Governor has taken one of at least two or three names and he's nominated that man. He's come before the Senate and he's been confirmed, but he's not yet an elected judge. He's only an appointed judge. And so, in the minority report, we take it one more step and we say, "At the first primary election following your appointment, your name will go on the ballot", and any lawyer, in the case of a district judge, residing in that district can run against that appointee. And in the tice of the Supreme Court, at that first primary election, any lawyer living in the state can run against that appointee. And the one who gets the highest vote in the general election—now maybe the appointee loses out. If there were three or four in the primary, the appointee is out. The ones—the two having the highest vote in the primary go into the general election, and there we get an elected judge. Now, at that point, the competitive, elective system in the minority plan stops. From that time forward, this elected judge goes onto the ballot for acceptance or rejection by the electorate at every election at the end of every term of office when there is an election. And if he is rejected, this process of nomination, confirmation, appointment, election is repeated. Now, we took a look at some statistics in Montana, and we find that since 1952 there have been 66 elections of district judges, of which—No, of 84, excuse me, 84 elections, of which, I think it is, 16 or 18 that have been contested. It leaves 66 elections of district judges since 1952 in which there has been no choice in the electorate whatsoever. It means this, that in 66 elections, the incumbent judge went onto that ballot's name with just a place for an "X", a place for a complimentary vote. It means this, that if that judge got one vote and there was no other write-in, one vote elected him. Compare that, if you please, with the minority plan on approval or rejection at a general election. Here the judge—the voter goes in and he says, "I" either "approve" or "I disapprove, I want him rejected." If more than 50 percent of the votes cast for the judgeship are rejection, that judge is through. But, more than that, if a large percentage or an ever-increasing percentage of rejection votes come along, how does that impress the attitude of this judge? Will it make him, as Mr. Holland suggests under the federal system, a tyrant? Or will it give him recognition that there is a very powerful electorate outside his door every four years. Now, what about this system? What happens when the elector goes in behind those black curtains and makes up his mind about the activities of that judge during the last 4 or 6 years? How does he really react? I ask you that. This is the kind of a choice that the minority plan gives you. Now, let's talk about the selection of judges and what we really are trying to achieve here. It's like Dave Holland says, "We want good judges." We want, I say, the best judges. Let me ask you this. If you are sued or you sue, where do you go for counsel? Don't you go to the best lawyer you know of that you can find to represent you? And don't you anticipate that your opponent will do likewise? All right. If you have a choice of the best lawyer, as does your opponent, how do you get that choice? You know it [is] either because of a personal acquaintance with that lawyer or you know it by reputation or you know it by inquiry. So does your opponent. And so you come into the courtroom, and there you are, down in the pit, and up there on the bench is sitting this man in a black robe. Now, this man in that black robe is going to judge the work of your lawyer and your opponent's lawyer, and I would think you would want to have a judge capable of understanding and judging their work. He should be at least as learned in the law and as experienced as these two good lawyers down there in that pit. Otherwise, you are not going to get the kind of justice you expect when you get into that courtroom. In other words, you've got to select a judge who is, number 1, an impartial judge. You've got to select a judge who is learned, who is skilled, who knows his business. He doesn't have to be—and I don't think he really should be—the most popular lawyer in the community, but he's got to be a man who has the courage of his convictions. He's got to be a man who is free from the onslaught of prejudice. This is the kind of a judge that will insure the administration of justice. Now, let me ask you this. If you're talking about the Supreme Court, how much of the electorate, how many of the electorate, of the average voter even knows who's on that Supreme Court?—the court of last resort; as we say in the minority report, the court of final appellate jurisdiction. Who knows these men? And if they can name them, if they're that much advised about the legal system, who also knows their background, their experience? How can the average voter be informed on the selection, especially, of Supreme Court justices? Not under the present system. How would they campaign today? They go along, they go out into the state, they meet a few people. Sometimes they trail along with either the Democratic or the Republican caravan, and they have nothing they can or will say, so the public is utterly uninformed about them in any way. How can you compare that elective system under those circumstances, if you agree with me, with the minority approach? At least this you know—insofar as the Supreme Court justices are concerned, that one of the candidates for that position has been through a screening, a good, thorough screening, a screening, perhaps, by 18 men. He has had to be confirmed by the Senate of this body, and then he comes to an election. He is at least endorsed to that extent, and to that extent his qualifications for that job are recognized, and the voters do have an opportunity to make an informed selection of judges. Now, this is the criterion of the minority report. I should like to go back now and take up one other detail, and that is with regard, again, to the rules of court. Mr. Holland indicated that the Supreme Court would have the power to make rules of practice—"Whatever that may mean", he says. Well, for his information, and I think every lawyer in this room agrees with me, the Supreme Court has been exercising the power to control the practice of law for, lo, these many years. No one becomes a lawyer in this state except that they are admitted to the practice by the Supreme Court. Moreover, as we all know—that is, of the lawyers know—that the Supreme Court has created what is known as the commission on practice, and that commission on practice—its duty is to look into the censure, to the discipline of lawyers. This relates to the practice of law. It is the application of rules in that regard that we have in mind and that all lawyers clearly understand when we talk about rules controlling the practice of law. It's that simple. It's been used, it's inherent, it's been with us for, lo, these many, many years. Now, I have not talked about the Judicial Commission or the Judicial Standards Commission. Neither did Mr. Holland. Mr. Holland's—both of us agree that there should be a Judicial Standard Commission. All the judges that appeared before us recommend it, and there is serious reason why we should have it; and that is, if you have a judge who is disqualified by reason of senility, maybe alcoholism, maybe repeated failure to perform his duty, today there is no method by which that judge can either be censured or removed or retired, short of impeachment. And I believe impeachment proceedings have only been used on two occasions in the history of the Constitution. It is really not a procedure that should be used, so far as Judiciary is concerned, except in cases where it really is applicable, and as I say, it's been used twice and perhaps not really applicable then. But the real hard-core problem and the real place for improvement in court—in justice and court reform—comes through the creation of a Judicial Standards Commission. I want to thank the Convention for permitting the Judiciary to more or less avoid the rules of presenting this in any other manner. I hope sincerely that what we have said clarifies the issues, clarifies the difference between the minority and majority report and that you are therefore better able to have an informed decision on it. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, members of the committee. I feel, before I begin, that I should tell you something about what kind of practice I have so you'll have some way of knowing whether or not I have an ax to grind. I belong to a law firm of three partners. We have a retainer from the Security Trust and Savings Bank, the Security Savings and Loan, and the Great Western Sugar Company. Otherwise, we have the same kind of practice that almost all the smaller lawyers, at least, in Montana have. We do a small amount of defense work in insurance cases, but for the most part we do plaintiffs' work. I've spent the better part of 10 or 15 years working on Indian claims cases, and I've been fortunate in winning for four or five Indian tribes some $30 million. That's my background—my practice. I'm a little torn at this moment on whether or not to give the speech I gave at the cocktail party last night or the one I've been scratching down here today, and I think wisdom dictates that I give the one I gave today—No, that I scratched down today. I have no present ideas of running for any judicial office, although I have in the past, and if John Harrison is in the gallery somewhere—I can't see him for all those lights—I want to assure him that, at this moment, I don't have any ideas about running for the court. However, this morning I got a communique from one of the places in this house, saying that there are three or four people who were interested in my running for the court, and that's three or four more than were interested when I ran for it the last time—(Laughter)—so, if somebody can scare up one or two more, I'll consider it a ground swell. In the absence of John Harrison from the galleries, I don't think there's anyone in this hall who knows nearly so much as I do about running for a judicial office. And, so far as I'm concerned, the question here between these two, the minority and majority reports, is whether we elect judges or whether we select them on some other basis, and the minority calls its basis the merit plan. Now, let me be the first to say, from first-hand experience, that the system we are operating under now for the election of judges is a rather terrible and terrifying system. Let me give you an idea of what it's like. If you do as I did and you run for the Supreme Court with the announced intention of not accepting any money from lawyers, you're in serious trouble right from the beginning. Now, I did make that announcement and I did hold to it, although I'll admit that one place and another I found in the neighborhood of $1,100 that was given to me anonymously. I can tell you honestly that I don't know where it came from, but I suspect very strongly it came from interested lawyers who respected my request that I not get money from lawyers. (Laughter) But this is your sole source of campaign funds when you're running for the Supreme Court. You either have lawyers who give it to you in case you'd win or you have lawyers who are afraid not to give it to you or you get it from lawyers who are genuinely interested in your philosophy of what a court ought to be. But, as I envision this terrifying prospect, if I were to be sitting on the court, I didn't trust myself not to give a little edge to the fellow who had given me $500 over the fellow who hadn't given me $500. Or I didn't trust myself to say that guy who gave me that $500 isn't going to get away with it; I will now hold for the other fellow. The thinking is this—it's basically bad—the American Bar Association recognizes it's bad, and it's—Canons of Judicial Ethics [of] the American Bar Association says something to the effect that we recognize that this is a bad system, but, nevertheless, it is the only source of money for the judges. However, they do frown on it. They are now working on a system for elected judges to be able to get money anonymously so they don't know where it comes from. But, on top of that, if you're running with—on short rations—you then must decide just how you're going to go about running for this job. Now, I don't know where Mr. Berg was or Mr. Kelleher was, who voices the same sentiment, when I was running for the court. I suspect that Mr. Kelleher was somewhere reading about the Baron deMontesquieu, and Mr. Berg, I don't know where he was—(Laughter) But, in any case—in any case, when I ran for the court, I did not have billboard number one, and that wasn't entirely because I couldn't afford it. I did not have one inch of space on the television nor on the radio. I set out to say what I thought was wrong with the court, and I started out—before I did that, I filed in the primary, and I got 25,000 votes. Those were either automatic votes or they're accidental votes or they're votes against the other fellow—I don't know where they came from. And that wasn't many. So I set out to say what I thought was wrong with that court, what was wrong with its philosophy, and I picked 15 or 16 significant cases, and for those of you—probably the lawyers only—who read those ads, they will agree with me that they did represent the philosophy of the court that we have now, as presided over by my opponent. And I went from 25,000 votes to 80,000 votes. Now, I got beat, and I have no recriminations about having been defeated. I let the judges know what I thought was wrong with them, and for an hour or two, I may have improved that court, from my standpoint. But, in any case, I did it, and I didn't run the way Mr. Kelleher and Mr. Berg indicated is the only way it can be done. I ran on an issue, and I didn't plaster my face all over the State of Montana, saying I am or am not better-looking than the other fellow. I tried to frame issues, and I ran on them, and I got next to them a little bit. They got nervous. Now, on top of that, to talk about our system now, a nonpolitical Supreme Court candidate is exactly like the illegitimate kid at the family picnic. The Democrats don't want them, the Republicans don't want them, he has nowhere to go. He has no base from which to operate. I went 400 miles one night to go to Bozeman, where there was a major dinner, and some of you delegates from that area may remember—400 miles, and the Chairman that night conveniently forgot to introduce me. This is what a Supreme Court candidate is faced with. As I say, it's not a good system as we have it, but I submit to you that in this State of Montana, where we have different problems from the problems they have in Missouri or any other state; where we have strong corporate influences; where, if I can elect a Governor and, through that office, nominate and appoint the district and the Supreme Court judges, I can run this state. I can run this state. I can own it. And Mr. Berg's system doesn't answer that problem. He's going to have an election right after you get that man in there, and next time he comes up, but after that election and he survives that election, either he or his opponent—and if he's not compatible with the powers-that-be in this state, his opponent is going to be—and he is going to win that election and he's going to be locked in there for the rest of his life, because, believe me, the Missouri Plan, the so-called review where a man runs against his record—in Missouri in some 30 years, they have yet—well, no, they have removed one judge. The people don't know any more about it than they did until I ran, when I told them what it was all about. That's the plain fact of the matter. Now, there's no way in this state that anybody can pick a committee that can pick a committee who, in turn, can pick judges that is free from some kind of influence. In our committee hearings, some youth from the law school came over and said, "Why don't you pick them the way this Constitutional Convention Commission was picked?" And, fortunately, I was loaded for that kid. We had—the House picked four people, two from each party; the Senate picked four people, two from each party; the Governor picked four, two from each party; and the Supreme Court picked four, two from each party. Do you know what we wound up with? We wound up with four attorneys on that Constitutional Convention Commission who were attorneys for the Montana Power Company, and one of them became Chairman of the commission. Now, it is impossible in this state—and I didn't check their other qualifications, like railroads and the Anaconda Company and that sort of thing—but you cannot, and I challenged Mr. Berg many times and I challenged the rest of the minority, you cannot pick a committee in the State of Montana that will be totally free of that kind of influence. And I'm afraid of it, and if I have to choose between one or the other, I'm going to the electorate every time, because I had a chance—I had a chance to be elected. With another few bucks, I might have made it. I'll always think so, but even if I didn't, those people in the other end of this building became aware that it's possible for somebody out here to be watching them, and I think they may be better people for it. But, at least, I had a chance. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman, I'm rising in support of the minority report. I must confess that when I read this report last night—the two, both majority and minority reports, I felt disappointed and frustrated, because I did not feel that they responded to the needs of justice in Montana, and this morning I have been making—writing speech after speech. I have torn them all up. I rise in support of the minority report as being the lesser of two evils. I may have more to say on this later. Mr. Cate may have taken me off the hook. I am very much disappointed in these two reports, after all the work that has gone into planning the Judicial system for Montana, but between the two, the minority report is the best. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Ladies and gentlemen, the Chair intends to let you to inquire of either Mr. Holland or Mr. Berg or to discuss it further. We do have some proposed amendments, but before we move into the amendment field, I want to take the tentative vote that these people have asked for. So I don't mind discussion, but I don't want you to make your amendments until we find what we're going to amend. So, is there other discussion involving either Mr. Berg or Mr. Holland or yourselves?

Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, could I have an opportunity to submit the third plan and have it participate in this discussion from here on out?

**CHAIRMAN GRAYBILL:** Is that the article that you have proposed here?

**DELEGATE CATE:** Yes, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Has this been placed around on the desks?

**DELEGATE CATE:** Yes, it has, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Does anyone have any objection to Mr. Cate speaking briefly on his third plan? (No reponse) Very well. Mr. Cate, go ahead and explain your proposed Judiciary Article.

**DELEGATE CATE:** Thank you, Mr. Chairman. Mr. Chairman, fellow delegates. I have examined the majority plan and the minority plan, and I think that they are nice pieces of legislation, but that's exactly what they are. They are legislation. We were sent here to write a Constitution, not to legislate, and both of those plans are simply legislation. I blame it on two things—first of all, the fact that the committee used the old article as the source of their beginning; and, secondly, I blame it on the Montana Plan. The Montana Plan came on the scene, and everybody here thought, "Gee, we have to write a plan like that and put it in the Constitution." Well, that kind of a plan, and the minority and the majority plan, do not belong in the Constitution. I think that the greatest judicial system that the world has yet devised is the federal system, and I think that we ought to stop for a moment and think about what we're doing here and compare what we do with our federal Constitution. The Article on the Judiciary in the federal Constitution is one page—one single page—and, in fact, the important parts that actually deal with the jurisdiction, the essential parts, are one-half page—two paragraphs for the greatest judicial system that the world has ever devised. The People's Plan—we've heard of the Montana Plan and the Moses Plan and the Holland Plan and the Berg Plan—well, you have on your desk what I'll call the People's

Plan. It's three short paragraphs, taken almost word for word from the federal Constitution, and that's all that we need to do here in order to perform our duty as writers of the Constitution. This proposal would not change the present system in any way. It would, however, require the Legislature to consider the matter after the adoption of this Constitution and to adopt an appropriate judicial system for the State of Montana, so the work, and the hard work, that this committee has done would not be wasted. it could be utilized by the Legislature, which is the place that it should be utilized. Furthermore, this plan provides all the flexibility that will ever be necessary for the future. This People's Plan, if adopted, will remain the provision in our Constitution, I would venture, until the end of time, because it's all that will ever be needed. The Legislature can change the judicial system in any way that they see fit to meet the changing times. Furthermore, if you adopt the People's Plan, it's not going to wreck the Constitution. Now, one of the biggest issues that you heard Mr. Berg talking about and Mr. Holland talking about was eliminating the JPs. You'll recall we had a referendum to eliminate the JPs a few years back, and it was defeated about three to one, or two to one—in any event, it was defeated. And, the point I'm trying to make is that, if we legislate here, we're building up that opposition that you people have expressed such great concern about. You're going to defeat the Constitution if you legislate a Judicial Article. And I submit there's no need to do that. The People's Plan, of course, would deprive you of the great debates that are going to take place here in the next day or two. It would eliminate the bloodbath that's about to be made here on this floor, but I would submit this and I would ask this consideration: that we go ahead and we discuss the majority plan and the minority plan, but when the time comes, I will submit the People's Plan to you, and I would like to have you keep that in mind throughout all these debates, and when the time comes, to vote on not just the two—the majority and the minority plan—but the People's Plan as well. I think that is all I have to say, and I would ask that this plan, which is taken directly from the federal Constitution, be considered by this Convention. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Brown.

**DELEGATE BROWN:** Mr. President, I feel that Mr. Cate's plan probably has a great deal of merit. I wouldn't want to give a final opinion on it at this time, but as a practicing attorney, I'm certainly going to give it serious consideration, and it is the type of plan, or at least the goal, I would try to reach. But we are now going to discuss the minority and the majority plan, and I would like to endorse the minority plan. Mr. Schiltz talked to you about elections. I am not going to get into the merits of each plan or whether we should elect or appoint our judges at this time. But, there is a great deal of merit to the minority, outside of the elective or appointive provisions of the plan, so I would ask you: don't vote against it because you're against appointing judges. We can always adopt this plan and then amend at the proper time. So, as an attorney—that's probably a death wish on Ben's plan—but I certainly endorse it.

**CHAIRMAN GRAYBILL:** Mr. Harbaugh.

**DELEGATE HARBAUGH:** I wanted to ask Mr. Berg a question.

**CHAIRMAN GRAYBILL:** Mr. Berg, will you yield?

**DELEGATE BERG:** I yield.

**DELEGATE HARBAUGH:** Mr. Schiltz raised a question, when he spoke, that concerned me as you were talking about your plan, and my question is: would judges, after the first election in which they are opposed, would it be possible under your plan for them ever again to be opposed, or would they only run against their record? Would opposition be absolutely precluded?

**DELEGATE BERG:** Under the plan as it is written in the minority, after the first election, opposition as a competitive race would be eliminated. The judge would run on his record for approval or rejection.

**DELEGATE HARBAUGH:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I'd like to make a couple of observations so that we can reach some kind of intelligent decision as to which of these plans to start with. As I view them, there are three principal differences between the majority and the minority. The majority puts complete emphasis on election of judges at all levels and contested at all times. The minority would have an appointive judge run contested only once and thereafter run uncontested on a Yes/No. I submit that we ought to remember that we have just finished adopting an Executive Article. We didn't permit our Governor or any of the other executive officers to run unopposed. We've adopted a Legislative Article. I submit that we remember we didn't let our senators or our representatives run unopposed. Another principal difference is that the clerk of the Supreme Court in the majority is elective, which I strongly endorse; in the minority it is appointive. And the third, and I think the principal reason that I am speaking in behalf of the majority plan, and I share John Toole's concern about its length, and that is the justice of the peace level of courts. I share the same concern of my good friend, Catherine Pemberton, that the basic motivation behind the Montana Plan and all the rest of the plans are to upgrade this level of justice in Montana. I think it's the sincere wish of everyone here, of everyone in the State of Montana, to upgrade the level, so the question now in determining whether we want to start on the minority plan here or the majority is, what would be the best approach. The minority's approach is: be silent, don't say anything about it, leave it to the Legislature. To me, that would permit the Legislature to retain two JPs per township, to retain the fee system, and to, in effect, leave it the way it is. The majority proposal here at least eliminated the requirement that there be two per JP—kept at least one elected JP per county and leaves it to the Legislature to set some qualifications, some standards, and a monthly salary to eliminate the monstrous sharing of the fee. As I mentioned, I share John Toole's concern about the length, but I would submit that we ought to make the decision as to which we are going to proceed with, on whether we want basically an elective Judiciary or appointive, and the best method of upgrading our JP system. I submit that the best method for us to proceed would be to take the majority report and take a scalpel to it and cut it down to where it should be, rather than to take the well-drafted and brief minority report and add a transfusion to it. And I, too, will seriously keep under consideration Jerry's proposal. Thank you.

**DELEGATE ARONOW:** Mr. Chairman, in the discussion there was no mention made of Section 19 in the majority report, which is the Commission for Judicial Standards. This is something that's new, that is much more workable than the provision in the minority report. This commission was created, basically, from the New Mexico Constitution, which was adopted—or, this provision of the New Mexico Constitution was adopted by the people of that state at an election in 1967. The composition of the commission was changed somewhat to meet what we thought were the needs of Montana. This commission will be composed of three judges, selected by the justices and judges of the Supreme and District Court of the State of Montana, and not more than one of the commissioners of the three judicial ones should be a member of the Supreme Court—therefore the Supreme Court would not have an undue influence in this matter—and then there are lay people, two lay people, who are citizens of the State of Montana, appointed by the Governor, who are not members of any of the branches of the government of the State of Montana. And these five individuals shall have the power in this commission to examine complaints against judges, and in the event a judge is accused of neglect of duty or a loss of mentality because of illness, excessive drinking, or drug addiction or illness, they may recommend to that judge that he voluntarily retire, or upon investigation, if they find the charges are true, they can call it to the attention of the Supreme Court, who will then look into it and, if it's true, hold a hearing—or if it looks like there's probable cause, I should say, hold a hearing on the matter publicly and have the right to remove. This is a method short of impeachment in order to take care of situations where a judge, because of age, may become not as mentally alert as he should be or because of protracted illness or injuries that may be of a permanent nature, he is incapacitated from performing his work. This is a real important provision. It's brand-new in Montana. We examined in our effort not only the New Mexico Constitution, but we looked into the provisions of the Alaska, Puerto Rico, Hawaii, California, Colorado, Idaho, Virginia and Kansas, and the New Mexico one seemed, with the changes, to fit Montana's needs, better than any of the rest of them. And I think you ought to look at this. This is applying only to judges, and the only way presently to remove a judge is through impeachment. We have tried to provide in the majority article for all of the things that we knew. Now, when the complaint has been made by Mr. Berg on the length of the article in relation to the jurisdiction of the District Courts, we, as Mr. Holland mentioned, we looked at some shortcut language. There are three pages in the Revised Codes of Montana of 1947—there's a little over three pages of headnotes of cases decided by the Supreme Court of Montana interpreting the provisions as to the jurisdiction and authority of the District Courts, and we felt that those decisions should not be thrown out the window, that they are encompassed, that they do show the way, and when we adopt the same language in the present Constitution, we also adopt all of the interpretations by the court of this language. When we have new language and change it, then we don't know what we may get in the way of interpretation. There is an uncertainty in the affairs of men and women—you are never sure. I suppose you think you may have a good lawsuit against somebody. With this new language, if the Supreme Court could, without ever deciding the merits of your lawsuit, could say that you brought your lawsuit in the wrong court or that the District Court does not have jurisdiction to hear the case or hear the matter. Those are real important matters, in my mind. Now, as to the matter that Mr. Berg brought up as to the jurisdiction of the District Court and the Justice Court, we also have hopes that the Legislature will implement the Justice Court, and in our notes and comments, we have laid down some guidelines, hopefully that we may have a system of justice courts that will, in effect, be small claims courts. And in the more populated areas, they will be staffed or the justice of the peace will be a qualified lawyer. We did have to start the jurisdiction of the District Court at $300. This is a technical matter, because the present statutes and the—only give the Justice Court jurisdiction up to $300. If we started the district courts out with 1,000 or $3,000, which we discussed in the committee, then there would be a hiatus between the—and it might be a year—if this Constitution is adopted and goes into effect, it may be a year before the Legislature meets and gets around to raising the jurisdiction of the Justice Court, and you would have a hiatus of a few hundred dollars or a thousand dollars, where you'd have no court in which to bring your action. So we had to do this in order to not leave that vacant spot. I see it's about 3 o'clock, and it's about the recess time, and I have a great deal more that I would like to say, but I am going—but I think it's a bad thing to talk after recess time. Thank you.

**CHAIRMAN GRAYBILL:** The Chair would like to decide before recess, if possible, which of these plans we're going to follow. Now, I would like a show of hands of all the people that still expect to talk on whether we should go one way or the other on this first motion. One, two, three, four, five—well, all right, in that case we won't attempt it. Now, what we're going to do is, when we are all through talking, we're going to have the Chairman of the committee make a motion to consider the majority plan, and then you can either adopt or not adopt that, and if you vote against that, I will presume that you want to work on the minority plan. We will not do that, however, until you're through debating, but I do hope you will keep your debate cogent to the issue of which plan and not to the specifics of the plan. I think we've had a lot of discussion now about the specifics, and let's not discuss the specifics too detailed now, because we'll be discussing that after we get on one plan or the other.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, I have the floor now, so I'll say a couple of words first. (Laughter) That was kind of tricky on my part, but I wanted to express my pleasure in having had the opportunity to serve on the Judiciary Committee. I picked that committee for a specific reason, because if you don't trust them particularly, get there where you can watch them, so that's what I did. (Laughter) And, in watching them, I sat for many days and for many hours listening to what you have listened to today, and all very interesting, but my mind finally got kind of confused. And, so, I finally decided that somewhere along the line I'd have to sort out the things that were going on, so I took the first thing first. And it's this simple: in either plan you can amend or adopt, change or alter it as you see fit, so we can pretty near do anything with either plan. But I picked the majority plan for one reason, and that was because we elect. If you pick the minority plan, in a left-hand way you get to do it, but to me it's an appointive plan. It's that simple. I move we recess until 3:15.

**CHAIRMAN GRAYBILL:** All those in favor of recessing, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

(Committee in recess until 3:25 p.m.)

**CHAIRMAN GRAYBILL:** The Committee will be in order. Please close the rear doors, Mr. Monroe, or someone. Very well. Is there further discussion on the issue of the majority or the minority report?

Mrs. Speer.

**DELEGATE SPEER:** I would say that I reject the majority report. I think the first criteria which we are to apply to the provisions of the new Constitution was whether it was flexible, and it seems to me that this majority plan for the Judiciary completely lacks flexibility. In fact, it freezes into the Constitution the present system. I think there is no reason, because we made, perhaps, a mistake in retaining all of the elected officials in the Executive branch, that we should repeat the same error in this.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman, would Mr. Berg yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Berg?

**DELEGATE BERG:** I yield.

**DELEGATE REICHERT:** Mr. Berg, if we vote in support of the minority proposal, would it be possible to have the judges run for election instead of running against their record?

**DELEGATE BERG:** Well, I would anticipate amendments with regard to the selection of judges if the minority report, as it is written, is not accepted on the selection of judges. We do have, in the minority, an alternate plan which we will present if the present plan—I think it's Section 7—is unacceptable to the Convention.

**DELEGATE REICHERT:** Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, I rise in support of the minority plan for many reasons. One of them is that I am a member of the minority—(Laughter)

**CHAIRMAN GRAYBILL:** Always, Mrs. Bowman?

**DELEGATE BOWMAN:** Always, Mr. Chairman. Thus far. (Laughter) However, at this time, there are two compelling reasons why I hope that the body will decide to discuss the minority report. I agree with Miss Speer that the majority report is totally inflexible. Concerning the justices of the peace, by putting the justices of the peace into the Constitution, as the minority report has done, is going to make any reform which is done in that area completely piecemeal and complicated, whereas, reform, which we all agree is necessary, will be much easier if we go with the minority plan. I feel that in writing a constitution, we are doing our job poorly if we go into detail in setting up a court system. I feel it is unnecessary, because the Legislature can create courts when they are needed and if they are needed in special areas. I think that the majority makes this—if not impossible, it certainly makes it difficult. I feel that the majority has shown a decided lack of imagination in writing their report. I must take issue with my friend, Mr. Schiltz. I feel that, under our plan he can, indeed, run for the Supreme Court if that is his desire. I feel that in the majority plan, history has proven that we do not elect judges—they are appointed—and we, more or less like sheep, go and reappoint them. Therefore I urge you to accept the minority proposal.

**CHAIRMAN GRAYBILL:** Now that everyone is here, the Chair would like to once again clarify the issue. The issue is whether or not to proceed down the majority or the minority report. Some mentioned to me at the recess that they thought that they would not then have the language of the opposite report available. That is not the case. You may amend as freely as you want to, but the point is that we are not going to proceed down both of them as we did before, and we may want, in fact, to proceed down the minority report first. So it's not going to forestall any debate, any discussion. So the issue is really only whether to start with the majority or the minority report and proceed down it. That's what the committee has asked.

Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman, I think they've been—that the issue of which of the two reports to go down has been fully discussed, unless somebody else had something on the matter. This is not which plan you're adopting, but just which plan you want to have presented to you for your amendment and your vote, and at this time, I will move the Committee of the Whole start to consider the majority report of the Judicial Article section by section, and I'll ask for a roll call vote on that measure.

**CHAIRMAN GRAYBILL:** Very well. Mr. Holland's motion is that we consider the majority report. I would like to say that if you sustain that motion, we'll consider the majority report. If you defeat that motion, we'll go to Mr. Berg and the minority report.

Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, as a substitute motion, I move that we consider the minority report. (Laughter)

**CHAIRMAN GRAYBILL:** Very well. Mr. Berg has made a substitute motion that we consider the minority report, and I would also make that a roll call.

Mr. Swanberg, for what purpose do you rise?

**DELEGATE SWANBERG:** I merely wanted to inquire, Mr. President, whether, as we consider either of the reports, we'll be able to switch back and forth?

**CHAIRMAN GRAYBILL:** I don't know if you'd call it switching back and forth, but all of the language is available, and anything may be amended as we go through. So, in a sense, the answer is yes.

Mr. Ward.

**DELEGATE WARD:** Mr. Chairman, I have risen about three times, and I was cut off before recess. I would like to say a few words, if possible.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE WARD:** Much discussion has come about on the Judicial Article, as such. I am a doctor. I have performed surgery and transfusions both. I have also had surgery and had transfusions. I'd much rather give a transfusion than do surgery, either one. Secondly, there's been a lot of talk about elective process—election of officials. As I see it, at the present, if we adopt the majority report, we will not give our voters any selection. This is what I call a "railroad".

**CHAIRMAN GRAYBILL:** Very well. The issue is on the substitute motion of Mr. Berg that we begin and proceed down the minority report.

Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, before recess, I understood that there were some seven or eight who still had comments to make relative to this, and, quite frankly, I'd like to hear those comments before I make up my mind.

**CHAIRMAN GRAYBILL:** I haven't cut anyone off yet, but if they don't stand up and take the floor, I'm going to put the vote.

Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, I guess what I have to say has a bearing on which one of these to start on. I wouldn't take the time of the Convention to do this except that this is the field to which I have devoted my life, and I feel more at home in discussing the problems of the legal profession than any other. There is clear agreement on the part of all that we do need good judges. It would be obvious that they have to come from the practicing bar in the area in—where they are to serve. The question is how to recruit them. They cannot be recruited by the attractions of high pay, because the judges don't receive high pay—nor by great prestige, because the judges do not have that—not by exciting work, because the work of the judge is anything but exciting. I think the real attraction for it to a lawyer is that it fills his sense of willingness to render a good public service. Now, what is involved in the decision of a lawyer who is considering whether to go on the bench? This is the thing that I would like all of the lay people here to consider quite closely, because it is one of the root problems in getting any man to be willing to get on the bench. I have known of this problem for many years in our community. In the first place, anyone, any lawyer in private practice, is required to give up all of his private practice and his connections of every kind. He must sever himself totally from the private practice of law, which has provided the support for him and his family. In the four years that he serves on the bench, of course, all of his clients go to other lawyers, make other connections, and they aren't instantly available to him should he return to active practice four years later. He must face, during the years he is on the bench, the fact that he must undergo the type of ordeal that Mr. Schiltz very feelingly described, and I have the utmost sympathy for anyone who has to try to conduct a nonpartisan campaign with such funds as he can save on his judicial salary. If he loses at the end of four years, you want to remember that he then begins at absolute rock bottom. He has no clients, no office, no library, no nothing. And if he's a man with a family and commitments for a mortgage on his home and other obligations, this is a pretty frightening thing to face. So the fact of life is—the simple, brute fact of life—that there are not very many lawyers who have any kind of a stable, private practice and family obligations depending upon them who are willing to give up all those things, to risk all of this for the purpose of going on the bench. And I suggest to you that this is primarily the reason why 66 out of 84, if those be the figures, of the contests for judge were not contested. It simply has not been a very attractive position to get into. Now, the major issue seems to be that you dare not risk the appointment plan, and I just want to say that if these figures are right, then in the last 20 years in Montana when we have had the open election plan readily available to us, only 18 out of 84 election opportunities were even sought by the voters. And even though the appointment plan we have involves no screening and is utterly and thoroughly political in its function, it seems not to have worked too badly, because there has not been any feeling on the part of the public that there should be any contest most of the time with whoever has been the incumbent judge. This would teach me that if you have a plan that does involve some careful screening, does involve confirmation by the Senate, and does involve a more secure future in rendering the public service on the bench, then it would help us to obtain a better quality of judicial candidate to begin with, and by this I mean, primarily, someone in the younger phases of his life who is willing to dedicate himself to a career of public service on the bench. And I think we all would find that those who have served on the bench for a substantial period of time learned to be, and do become, the careful, impartial judicial officers that it—is the real target of all of us. And for that reason, I feel, like Mr. Toole, that the minority plan offers us greater advantages in this direction than does the majority plan.

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman, the question before us is whether we are going to consider the minority plan or the majority plan which has been offered to us. Thus far in the Convention, it has been the practice of this body to base our considerations upon what are essentially restatements of existing articles in the Constitution. The majority plan is essentially a restatement of existing articles in the present Constitution. The minority plan is a new article which has been proposed by a minority of this committee. I suggest to you that if we now, at this stage of the Convention, abandon the mode of operation which we have adopted thus far, we are entering onto dangerous ground. The Convention, up to this point, has taken the position that it is the function of this body to proceed with caution and to make amendments to the existing Constitution and to improve it where we may, so that when we submit this finally to the voters, they will be faced with a document which is relatively known to them and which has little change but some improvement. If we now strike off onto new territory, after having already basically adopted the form of the two branches of government which we have considered, I suggest to you that we may create a Judiciary which is entirely out of proportion to the Executive and to the Legislative branches which we have considered. If we are now, at this point, going to change and instead of restating or amending the existing Constitution, strike off and write a new Constitution, which in my opinion is what we should have done, then there is no question that we should, at this point, adopt, by voice vote, Mr. Cate's proposal and proceed to the next section.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, when a professor of economics arises to speak on a subject like this, I suppose the tendency is to dismiss him as simply a temporary refugee from the ivory tower. So I will begin by qualifying myself. Over the past eight years or so, I have had considerable experience with the courts of Montana and of surrounding states. I have testified as an expert witness in 12 of the 18 judicial districts of Montana. I have worked with lawyers in all of them. I have also testified in the courts of Alaska, Washington, Utah, Wyoming, South and North Dakota. So, I've had, I think, what might be called a "worm's eye view" of the operation of the courts, and I suggest to this body that this question of the selection of judges is a very serious matter, one which we should approach with a good deal of conservatism and a good deal of thought. Now, I do not agree with everything that Mr. Holland said. I would like to enter what might be called a concurring opinion. I concur with the results. I think we should adopt, with certain changes, perhaps, the majority plan. I came here prepared, I must say, to vote for the Montana Plan. I listened with—in great detail, great length, the presentation made by the citizens' committee in Missoula, and I said, if certain obvious defects in that plan could be patched up, if they could be fixed by the Judiciary Committee of this Convention, then I would go with them. But what Mr. Berg has said here today on the floor is, essentially, that they found it impossible to fix up that plan and therefore they intend to pass it on to the Legislature. Now, I don't think the Legislature is going to be able to patch it up if they couldn't patch it up. Now, in my view, the Montana Plan has not been made viable by the minority and their plan is no better—

not as good, as a matter of fact—because of the minority's acceptance of two false principles: one, the Constitution must be as brief and as succinct as possible; and, secondly, that everything possible should be left to the Legislature. We should not legislate in the Constitution. These two principles have been used before, will be used again in this Convention, I think, to defeat the interests of the people. I believe that the majority proposal is a substantial improvement on the past and the present Constitution and contains the seeds of possible future improvement, and I therefore favor the majority proposal.

**CHAIRMAN GRAYBILL:** Mr. Heliker—I mean Mr. Kelleher.

**DELEGATE KELLEHER:** I never thought, Mr. Chairman, that I would ever disagree with my very learned brother, George Heliker. I only want to speak once today, and I have a motion for an amendment that has been placed on all the desks, and I would like to know whether it would be in order to do it—to submit this amendment to the minority report at this time, and if not, I'll just sit down.

**CHAIRMAN GRAYBILL:** It isn't in order at this time as far as I can see, but I can't really tell because this is one desk that it didn't get placed on.

**DELEGATE KELLEHER:** Would a page come up here, please, and I'll give them my copy.

**CHAIRMAN GRAYBILL:** Well, by nature, it's an amendment to Section 7.

**DELEGATE KELLEHER:** Of the minority report, yes, sir. It resurrects the Montana Plan in part.

**CHAIRMAN GRAYBILL:** All right, well—No, it's not in order.

**DELEGATE KELLEHER:** Thank you.

**CHAIRMAN GRAYBILL:** That does count, Mr. Kelleher, as once. (Laughter) I'm sure the body will sustain me in holding you to your word, Mr. Kelleher. (Laughter)

All right. I see no one else up for debate, and the issue is the substitute motion of Mr. Berg that we begin consideration with the minority report. Now, once again, the purpose of this is that the minority and the majority reports are quite different in direction and scope. This is not like the Legislative Article, where they were fairly similar, and since they're quite different, both the majority and the minority sides of the Judiciary Committee want to consider one or the other. That does not mean that you cannot amend anything they put in, and if you want to amend it out of the other report, that's fine; I guess you'll just have to make sense out of what you're doing. So, all we're doing is deciding where to start. And if you consider—if you sustain Mr. Berg's motion, why, he will be the leader of the discussion. And if you sustain Mr. Holland's motion or if you vote against Mr. Berg's motion, Mr. Holland will be the leader, but you have free rein to amend. Now, the Chair does feel that you've had—and the Chair would like to express its judgment that this body has had the benefit of a great deal of legal talent this morning, and it seems to me that the Chair would be perfectly in order to rule very tightly on the fact that you're on the subject from now on. And we don't need to discuss broad generalities, but only the language. So, from now on, when we get going, we'll try and stay right on the point. Now, so many as are in favor of Mr. Berg's substitute motion that we begin proceeding on the Judiciary Article by using the minority report, please use the voting machines and vote Aye; so many as are opposed, vote No. A No vote is for the majority report. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well. Will you tally the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Absent |
| Babcock | Absent |
| Barnard | Absent |
| Bates | Aye |
| Belcher | Absent |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |

| | |
|---|---|
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Absent |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Excused |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Absent |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Absent |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Absent |
| James | Absent |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Absent |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Excused |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Aye |
| Warden | Aye |
| Wilson | Absent |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK SMITH:** Mr. President, 49 voting Aye, 37 voting No.

**CHAIRMAN GRAYBILL:** 49 having voted Aye, 37 having voted No, Mr. Berg's substitute motion prevails, and we will proceed with the minority proposal, the text of which is on page 40 in the booklets and the comments at which start on page 46 in the booklets. Will the clerk please read Section 1 of the Judiciary minority proposal. Page 40. Will you please read Section 1, Mr. Clerk, on page 40.

**CLERK SMITH:** "Section 1. Judicial power. The judicial power of the state is vested in a Supreme Court and District Courts and such other courts as may be provided by law."

**CHAIRMAN GRAYBILL:** Very well. Now, for what purpose do you arise, Mr. Habedank?

**DELEGATE HABEDANK:** Mr. President, I wish to explain my failure to vote. I am not wishy-washy. I am willing to take a stand. But Mr. Tom Ask, who is in favor of the majority proposal, had to leave, and he requested that I abstain because pairing was not allowed, and I therefore did.

**CHAIRMAN GRAYBILL:** Very well. Your explanation will show on the journal.
Mr. Berg.

**DELEGATE BERG:** I move the adoption of Section 1 of the minority report. The minority report on Section 1 is as brief, is as intelligible as the Section 1 of the proposed article of Mr. Cate. In that it's nearly identical, except this—that it vest judicial power not only in the Supreme Court but also in the District Court. It recognizes, then, two constitutional courts, being the Supreme Court, which as you will note is a court of final appellate jurisdiction, and in the District Court, which is the principal, single trial court. Now, I should like to observe this, and I would like you to observe this in considering Section 1. It is nearly identical with Section 1 of the majority report, with the exception, of course, that it does not mention the justices of the peace as a constitutional court. It is the belief of the minority that justices of the peace should be left as a legislative court so that they are a flexible court, so that over the years they may be adjusted for the complexities of rural and urban situations. In other words, in rural areas, justices of the peace will have to be an entirely different court than they may eventually be within the cities or the urban areas, and for this reason, if we lock them in the Constitution and we set their jurisdiction in the Constitution, we render them that much more inflexible. That was the reason that the minority omitted them. You will note that, in the minority report, only two courts are considered constitutional courts, which will not be, as far as jurisdiction or power is concerned, interfered with by the Legislature or the Executive, and this, the minority believes, is consistent with the separation of powers. In other words, the judicial power will be vested by the Constitution in the Judiciary and in the Supreme Court and in the District Court. The additional judicial power will, so far as the justice courts are concerned, be left for the Legislature to delegate. But only to that extent does the Legislature delegate powers, and not to either the Supreme Court or the District Court.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Berg's motion that Section 1 of the Judiciary Article, minority report, page 40, be adopted. The proposal is: "The judicial power of the state is vested in a Supreme Court and District Courts and such other courts as may be provided by law." So many as shall be in favor, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it. Now, Mr. Berg, since you didn't move that that be reported, I wonder if you'd put it over again?

**DELEGATE BERG:** I now move that his committee, after having had consideration of Section 1 of the minority report, when it does rise and report, adopt Section 1 of the minority report.

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered. Will the clerk read Section 2.

**CLERK SMITH:** "Section 2, Supreme Court powers. The Supreme Court shall have final appellate jurisdiction and general supervisory and administrative control over all courts. The Supreme Court may make rules for the practice of law and judicial administration in all courts. The Supreme Court shall have such power to make rules of procedure as may be provided by law. The Supreme Court shall have original jurisdiction to issue, hear and determine all writs appropriate to the exercise of jurisdiction, including the writ of habeas corpus." Section 2, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** I move that when this committee does arise and report that it adopt, after having under consideration Section 2 of the minority report, that it adopt the same.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Section 2 deals with the appellate power of the Supreme Court. It defines the appellate court power as final appellate power. We used the word "final appellate power" with specific reference to the Supreme Court and with the idea that, by vesting final power in the Supreme Court, it not only indicated a place where litigation would finally come to rest, but that it would permit the creation in the future, if it became necessary, of intermediate appellate courts, and the word "final" would be so construed. With regard to the rulemaking power of the Supreme Court, we have categorized or classified that into two parts: that which relates to the internal function of the judicial system and, as I indicated in my earlier remarks, relates to the rules of practice, the conduct of lawyers before the court, their admission to practice and their control of practice. It would—insofar as administration of all courts are concerned, it will permit the centralized administration of the judicial system and vest it in the highest court, the Supreme Court. As I indicated to you, we are one of 13 states that do not have it; we are now one of three considering whether we should have it. Insofar as the rules of procedure are concerned, we have very carefully circumscribed and limited the power of the Supreme Court to make rules. Indeed, in effect, we have left the rulemaking power to the Legislature but, in effect, permitted the Legislature, as it has in the past, to give to the Supreme Court rulemaking power, but we have limited to the rules of procedure because of our fear of what might occur if we gave them rulemaking power in the field of evidence. Again, the last paragraph relates to the original jurisdiction of the court to issue writs. Now, we have said that they may issue and hear and determine all writs appropriate to the exercise of its jurisdiction. Note that we have specifically included the writ of habeas corpus. About all we've done insofar as the old Constitution is concerned is this, that we have eliminated the enumeration of the various writs of certiorari, mandamus, prohibition, and so forth. We do not think that's necessary, because we believe that all writs necessary to the exercise of its jurisdiction is adequate. Indeed, as we examine constitutions of other states, that is almost consistently the language used for appellate jurisdiction insofar as original or remedial writs are concerned. However, with regard to the writ of habeas corpus, because we do think that that is a writ that is so essential to the preservation of the liberty of an individual, that it ought to be emphasized by including—and specified within the power of the Supreme Court to issue such a writ. We, however, did not think it necessary to legislate on that and provide for the procedure of the issuance of the writ, as does the old Constitution. We therefore eliminated the procedural provisions, but we kept the writ intact. We felt that, in spite of the fact that within the Bill of Rights it is said that the writ of habeas corpus may not be suspended except in case of invasion, that, nevertheless, it ought to be reemphasized in the Judicial Article that it ought to be a writ that not only the District Court but also the Supreme Court can on occasions issue if necessary.

**CHAIRMAN GRAYBILL:** Mr. Berg, the Chair does not wish to debate, but I would like to inquire of you about this section, and without objection, I'd like to ask you a question. Will you yield?

**DELEGATE BERG:** I yield.

**CHAIRMAN GRAYBILL:** In line 11, page 40, you use the word "final", which I heard you explain. I have checked the Judicial Article of the present Constitution, and it does not use the word "final"; and I have checked the United States Constitution, Article III, and it does not use the word "final"; and I am aware of what you say about inferior court—or about intermediate courts. My question is this: Are we likely to confuse people that we have somehow done away with the right to appeal from the Montana Supreme Court to the U.S. Supreme Court cases which involve federal questions?

**DELEGATE BERG:** Oh, I would not think so, because that would be controlled entirely by the United States Constitution, which I think at all points would be superior.

**CHAIRMAN GRAYBILL:** May I ask you another question?

**DELEGATE BERG:** Yes, I yield.

**CHAIRMAN GRAYBILL:** Granting that it wouldn't do away with the federal jurisdiction, which I am sure you and I would agree to, do you believe that it's not misleading to the public to say that it's final?

**DELEGATE BERG:** No. In fact, I think it better specifies insofar as jurisdiction within the State of Montana is concerned that this is a court of last resort.

**CHAIRMAN GRAYBILL:** Very well. Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, I'm on page 47, which is the comments on the minority proposal, and I would move to strike, from Section

2 of the minority proposal, lines 23, 24, 25 and 26, which provide that the Supreme Court may make rules for the practice of law and judicial administration in all courts and that the Supreme Court shall have the power to make rules of procedure as may be provided by law. The Supreme Court at this time does presently have this power, but it is legislative power. It's subject to change by the Legislature, and what these two paragraphs mean is that whoever controls the Supreme Court of Montana controls the entire legal profession of the State of Montana, and I think that's a dangerous thing to do. Lawyers have traditionally fought for independence and have maintained independence. Over the years, there has been a movement in the State of Montana to, what they call, "integrate the bar". In other words, make all lawyers members of the bar. By mandate, you would have to be a member of the bar association in order to practice law in Montana, and it's a method of controlling the lawyer who doesn't agree with the establishment—this type of thing. And it's a dangerous thing to do. And I think it's unnecessary to place this type of power in our court without having the right of the Legislature to regulate it, and I make that amendment for that purpose. Thank you very much.

**CHAIRMAN GRAYBILL:** Very well. Mr. Cate's amendment deletes lines 23 to 26 on page 47, or it deletes lines 13 through 16 on page 40, and has the effect of taking the rulemaking power out of Section 2. Is there discussion?

Mr. Davis.

**DELEGATE DAVIS:** Mr. President, would you give consideration to the fact of whether we should see if the minority would mind subdividing these different matters as we go along so we could treat them—I think it may be even more important as we get further down. We're covering an awful lot of ground in each sentence here, which really are different subject matters. It just—

**CHAIRMAN GRAYBILL:** Well, Mr. Davis—

**DELEGATE DAVIS:** Would you consider that, Mr. Berg?

**CHAIRMAN GRAYBILL:** Mr. Davis, the rules say "section by section". Now the way, it seems to me, to get at your problem is—Mr. Cate has taken two sentences out; if you want only one, make a substitute motion to delete only one and I'll recognize it.

**DELEGATE DAVIS:** Oh, I mean if they will subsectionize the first paragraph—this deals with different subject matter as a subsection, is all. I don't—I'm not moving that. I just wonder if you think it would be advisable.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Insofar as I'm concerned, as a matter of style, if you want to call it subsection 1, subsection 2, and subsection 3, I have no objection. And I really believe that when and if this gets to Style, some of those form changes will be made, but I do believe that each sentence contained within the paragraph relate to the general subject matter as relating to the power of the Supreme Court.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I don't have any strong hope that this expression of mine is going to receive a favorable ear. However, I have the feeling that we're getting at this a little bit faster than I had hoped we would. Mr. Holland has been off the floor for the last few minutes, and he's in effect the floor leader for the majority, attempting to draft an amendment that's quite aways down the road. In the meantime, I think there are some rather important things that are going by that we aren't—that are rather technical, and I think we should have until our next session on Tuesday to start on the rest of this debate.

**CHAIRMAN GRAYBILL:** The Chair is going to rule you out of order at this time. We're considering an amendment to delete lines 23 to 26.

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move as a substitute motion that Section 2, Supreme Court powers, be amended after the word "powers", in line 20, by inserting the word "1"—or maybe we can have "(1)". And I insert—I further move that in line 23, that we insert before the word "the" "(2)". And I further move that on line 25 we insert the "(3)". And on line 27 that we insert the word—or, insert the number (4) before the first word "the".

**CHAIRMAN GRAYBILL:** Very well. Your substitute amendment is accepted, and the issue is now on the substitute amendment to number the paragraphs of Section 2. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, say No.

(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered. Very well, since that was a substitute motion, Mr. Cate, that wipes off your amendment and we are now discussing Section 2, sub. 1: "The Supreme Court shall have final appellate jurisdiction and general supervision and administrative control over all courts."

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman,—I'm using line 40—or page 40, which happens to be my habit, I guess, and on line 11 of page 40 and line 12, I move that Section 2 of the Judicial Article be amended by striking the words "and general supervisory".

**CHAIRMAN GRAYBILL:** Mr. Schiltz, your motion is well taken and you may discuss it. You have stricken the words "and general supervisory"—in your amendment.

**DELEGATE SCHILTZ:** Yes. May I speak to it?

**CHAIRMAN GRAYBILL:** Yes, sir.

**DELEGATE SCHILTZ:** This is an old hangover from the 1889 Constitution, and it looks like just general words, but as a result of those three magic words, the Supreme Court in 1892, in a case that might have been the Boston-Montana Copper Company case—I think that's it—invented a writ, an extraordinary writ, called the writ of supervisory control, whereby they controlled a judge and his court in the city of Butte—this was part of the War of the Copper Kings. Since then, the writ of supervisory control has been used very sparingly, and every time the Supreme Court of Montana used it, up until about the last 20 years, it said, "This writ must be used very carefully and only under unusual circumstances." In the last 16 or 17 years, this writ has been used with great frequency when an appeal would have lain just as well or when some other appropriate writ would have served the same purpose. I think that you will find that the district judges find themselves universally insulted by the use of the writ of supervisory control. It isn't used as carefully and sparingly as it used to be, and that writ can be eliminated by the simple expedient of striking the words "and general supervisory".

**CHAIRMAN GRAYBILL:** Is there discussion of Mr. Schiltz' amendment to eliminate the words "and general supervisory"?

Mr. Aasheim.

**DELEGATE AASHEIM:** (Inaudible) Mr. President.

**CHAIRMAN GRAYBILL:** All right, what's your point?

**DELEGATE AASHEIM:** I think we're getting confused by jumping back and forth here. Why don't we stay on either one area or the other? We have the comments on page—what?—47, and I would like to move, if it's in order, that we stay on the minority proposal and stay with the comments beginning on page 46.

**CHAIRMAN GRAYBILL:** You may make your point, Mr. Aasheim. I don't feel it's in order. The Chair has a reason for using the other one. You may use whichever you like, and I'll try and keep both references, but it's not in order. We have a motion before us.

Mr. Berg.

**DELEGATE BERG:** In answer to Mr. Schiltz, I asked the intern to determine how many times the writ of supervisory control has been employed by the Supreme Court. Since 1900, it has been used 21 times. That is, it has been applied for 21 times. It has been issued 15 times; it has been denied 6 times. And the case to which Mr. Schiltz had reference with regard to the so-called War of the Copper Kings was Hinsey versus the District Court, and in that case the writ was refused but the court laid down the principles under which it will be issued, and they are these: "the writ of supervisory control is one to be seldom issued and then only when other writs may not issue and other remedies are inadequate, and when the acts of the court complained of"—complained of as threatened—"will be arbitrary, unlawful, and so far unjust as to be tyrannical." Now, it seems to me that the employment of such a writ, whether it's unique in Montana or not, has a fitting place within our jurisprudence. It is carefully circumscribed by the court. It has not been used flagrantly; it has not been abused. Moreover, the words "general supervisory control" are not limited, in spite of the use of the writ of supervisory control, to the use of that as a method of simply controlling litigation in the lower courts. The words "supervisory control", when coupled with "administration"—meaning general supervisory control and administration—include the vital need for supervision of administration of the entire Judicial system, and as I think I have emphasized, we are one of the very few states that does not employ it, and if we fail to encourage its use or at least to enable it here now in our court system, we will have taken a step backward. We'll not be in keeping with any other Judicial system in the country.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, fellow delegates. I rise in opposition to Mr. Schiltz's motion to do away with the fundamental writ of supervisory control. Of those 21 times that the writ has been asked for in our court, I think I have had something to do with about five of them, and we've got it once out of the five times that we've asked for it. And, I'll tell you why you need the writ of supervisory control and why it's good for the people to retain the writ of supervisory control and why I favor the minority report in this regard. If you run into a situation in a lawsuit where a judge, a district judge or a JP, absolutely ignores the law, if you did not have the writ of supervisory control, you would have to go all the way through the trial and then appeal it to the Montana Supreme Court. With the writ of supervisory control you can say, "Judge, you're wrong and I'm going upstairs and get a writ of supervisory control to make you right", and you don't have to go through all the expense of having a trial. Now, if you're a big company, you don't want the writ of supervisory control. If you've got a lot of money—and money has a lot to do with lawsuits, you know—if you've got a lot of money, you don't want the writ of supervisory control. But for the people, the little people, they need the writ of supervisory control because it's a way to keep the judges honest and it's a way to avoid having to go all the way through a trial and all the expenses of an appeal in order to get an issue decided. And I think that—I've tried to explain here what a writ of supervisory control—what it does and what it's used for—and I think it's something that is fundamental to our system and that it's effective, that it's something that ought to be retained, and I commend the minority report for recognizing that and retaining it and would ask you to do likewise. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman, would Mr. Schiltz yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Schiltz?

**DELEGATE SCHILTZ:** Yes, I yield.

**DELEGATE HABEDANK:** If your substitute—or your amendment was adopted, what power would the Supreme Court have to meet those situations that Mr. Cate was referring to?

**DELEGATE SCHILTZ:** Well, 49 other states manage to get by with a writ of prohibition. That's the short answer.

**DELEGATE HABEDANK:** Thank you, Mr. Schiltz.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** I would like to state that Mr. Cate told you that when the judge makes a mistake, you say, "Judge, I'm going upstairs to get a writ to make you right." I would like to say you may say, "Judge, I'm going upstairs to get a writ"—that you'll just try to get it; you may not get it.

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman, I wonder if those figures are right. I've asked for it, that I can think of, I think three times and gotten it once; it seems that Mr. Cate and I account for one-third of all the writs that have ever been granted. It's hard for me to believe that. I suppose it may be. Maybe we're hyperactive. (Laughter)

**CHAIRMAN GRAYBILL:** Stick to the subject, Mr. Arness. (Laughter)

**DELEGATE ARNESS:** Excuse me, Mr. Chairman. I support Mr. Schiltz's comments. The writ is used in cases where the draftsman is caught between the question whether he should use certiorari or prohibition. I submit to the Convention that the other states are able to get by and the lawyers there able to make up their minds; we ought to be able to make up our minds just as well here and get along without this thing.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I would like to close on my amendment, if I can.

**CHAIRMAN GRAYBILL:** If you think you need to; you may.

**DELEGATE SCHILTZ:** Well, quite frankly, Mr. Chairman, I'm looking for anything I can find in Section 1, 2 or 3 to stall for a little time. This—

**CHAIRMAN GRAYBILL:** Then close quickly, Mr. Schiltz. (Laughter)

**DELEGATE SCHILTZ:** This I consider to be a well-taken motion, however, because I have been offended by the writ of supervisory control ever since I was in law school. I hope we strike it.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mr. Schiltz's motion, which is to take out the words "and general supervisory"—which has the effect of taking out the writ of supervisory control—so many shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it.

Mr. Davis.

**DELEGATE DAVIS:** Mr. President [Chairman], will Mr. Berg yield to a question, please?

**DELEGATE BERG:** I yield.

**DELEGATE DAVIS:** Mr. Berg, in the sentence it says, "and administrative control over all courts." Does that mean that the Supreme Court, then, would take the administrative control from each of the district courts, or how extensive did you have in mind on this?

**DELEGATE BERG:** It is—I would say it is broad enough to include administration in all courts. It is the terminology generally employed by other states in the creation of centralized administration of the judicial system.

**DELEGATE DAVIS:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Would Mr. Berg yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Berg?

**DELEGATE BERG:** I yield.

**DELEGATE DAVIS:** Would this deprive the local district judge, then, of the right to call in a judge, or would the Supreme Court take over the calling in of judges in all the districts in our state?

**DELEGATE BERG:** No, that would not result in that, because we have other provisions within the minority article specifically covering the disqualification and calling in of other judges.

**DELEGATE DAVIS:** What administrative—

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Will Mr. Berg yield to another question?

**DELEGATE BERG:** I yield.

**DELEGATE DAVIS:** Would you amplify—this is very important, it seems to me, to the judges, and I want to explain, when I get home, to my judge exactly what administrative control you want the Supreme Court to take over that he now has.

**DELEGATE BERG:** Well, I can't specify in particular what exact administrative control they may exercise, but I do know this: I am more concerned about the lower courts that have for so many years been left as sort of a sick cousin of the judicial administration system. I visualize that the Supreme Court can assist them in their training; they can assist them in providing methods of keeping their dockets, methods of proceeding on arrest. I think the Supreme Court, through administration, can do a great deal towards improving the administration of justice on the lower level. I don't contemplate that the Supreme Court will ever find it necessary to do very much in the way of administration so far as the general jurisdiction of the district courts are concerned.

**DELEGATE DAVIS:** Thank you, Mr. Berg.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I move to amend subsection 1, Section 2—I'm on page 47 at line 22—by striking the two words "and administrative".

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE McNEIL:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** That's on line 12 on page 40, and that's on line 22 on page 47. Go ahead.

**DELEGATE McNEIL:** Mr. Chairman, these two words that have caused concern to Delegate Davis were an integral part of the Montana Plan. I listened to several persons testify, and they all agreed that part of this administrative control over district courts was intended to give the Montana Supreme Court the power to take a judge from Ekalaka and assign him to Wisdom and then up to Libby and down to Two Dot. This power, although it sounds as though it is just buying the paper and pencils, because it's labeled administrative—this power could be abused by a Supreme Court to, in effect, get rid of any district judge they wanted to get rid of by simply assigning him anywhere in the state that they wanted to. And I submit this is a very dangerous control over our District Courts that should not be given to our Supreme Court.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Would Delegate Berg yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Berg?

**DELEGATE BERG:** I yield.

**DELEGATE JOYCE:** Mr. Berg, did Chief Justice Harrison testify before your committee?

**DELEGATE BERG:** Yes, he did.

**DELEGATE JOYCE:** And—

**CHAIRMAN GRAYBILL:** You may ask a series of questions.

**DELEGATE JOYCE:** All right. (Laughter What did Chief Justice Harrison have to say about whether or not he, being the present incumbent in that—as Chief Justice of that court, whether he wanted to have administrative control over the District Courts?

**DELEGATE BERG:** Well, as I recall, the Chief Justice liked the Montana Plan and would have preferred to create an administrative office, an independent office, for the administration of the courts. I am sure he wanted the power, however, for the appointment of that administrator, and the control of him, left with the court.

**DELEGATE JOYCE:** I see. Was it his position that he didn't want—that it was an integral part of giving him, the Supreme Court, administrative control—then the sine qua non would be that they appoint the man that they were going to delegate that to, is that correct?

**DELEGATE BERG:** That would be correct.

**DELEGATE JOYCE:** And if they didn't get the election of the clerk of the Supreme Court, then they didn't want the administrative control; did that also follow?

**DELEGATE BERG:** No, that did not follow. As a matter of fact, the Supreme Court, as I understood the Chief Justice when he testified, didn't really care whether the clerk was appointed or elected. He felt that most any clerk they had he could work with in administration of the court system.

**DELEGATE JOYCE:** Would Mr. Berg yield to another question?

**DELEGATE BERG:** Happy to.

**DELEGATE JOYCE:** Would you interpret this power, then, to control the administration of the Supreme Court, the power to control the clerks of the District Court?

**DELEGATE BERG:** No, I would not interpret it to mean that, because I believe that, as the article is written, the duties of the clerk of the District Court are as provided by law or prescribed by the district judge, so I would not expect the Supreme Court to exercise power there.

**DELEGATE JOYCE:** But—you wouldn't expect them to—

**DELEGATE BERG:** Well, I don't think they could. I'll answer it that way.

**DELEGATE JOYCE:** Do you think you've guarded against that they can?

**DELEGATE BERG:** I think that providing that the duties of the clerk of the District Court will be as provided by law and as prescribed by the district judge, yes, that's the limit of the power in regard to the clerk of court.

**DELEGATE JOYCE:** Will you yield to another question?

**DELEGATE BERG:** Yes.

**DELEGATE JOYCE:** Does the—the United States Supreme Court does undertake, through the administrative office of the courts, to administer the local federal courts around the nation, don't they?

**DELEGATE BERG:** Yes, they do.

**DELEGATE JOYCE:** And that power to do that is not given to them, though, by the United States Constitution, is it?

**DELEGATE BERG:** No, very few powers that the federal courts exercise come from the Constitution.

**DELEGATE JOYCE:** Is that administrative office of the courts set up by the laws of Congress or by the court on its own motion, or do you know?

**DELEGATE BERG:** I do not know. I rather think it's by the court on its own motion, but I don't know.

**DELEGATE JOYCE:** Well, wouldn't it be better to have it set up by the laws of Congress, or what is your opinion on that?

**CHAIRMAN GRAYBILL:** I'll rule that out of order.

**DELEGATE JOYCE:** I strike. May I speak, then, in support of the substitute motion to strike?

**CHAIRMAN GRAYBILL:** Very well, Mr. Joyce.

**DELEGATE JOYCE:** It seems to me that this is a dangerous thing to write into the Constitution. I think that the Legislature, if the time comes that it's necessary to administer all the courts of the state out of the Supreme Court, that the people speaking through the Legislature ought to make that decision. And I think further than that, that it really is impractical to expect the Supreme Court justices to administer all the courts. I don't—doubt very much if they want to. They don't have the time to do it. The Chief Justice is busy enough just managing the docket of the court itself. He's primarily elected to write opinions and to study the cases, and it just seems to me not only unwise, constitutionally, to write it in, but it's impractical to impose that duty upon them at this present state of—and in the foreseeable future, and that therefore it should be left to the statute, and I support the amendment to delete.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. McNeil's amendment to strike the words "and administrative" on line 12 of page 40, to have the effect in subsection 1 of taking out administrative control over the courts. So many as are in favor of the motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as opposed, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it.

**UNIDENTIFIED DELEGATE:** Division.

**CHAIRMAN GRAYBILL:** Division—very well. So many as are in favor, say Aye—or vote Aye on the voting machine; and so many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** 51 having voted Aye, 31 having voted No, the motion passes. The section now reads: "The Supreme Court shall have final appellate jurisdiction and general supervisory control over all courts."

Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. President and members of the assembly. It looks to me like we're giving the court powers before we know how they are to be selected. Now, later on, we are going to determine whether they are going to be elected by the people or by some body, and I think—in my judgment, it would make a difference how much power we are going to delegate to them, so I'm going to move that we pass consideration of Section 2 until our next day, which will be Tuesday.

**CHAIRMAN GRAYBILL:** Two, sub. 1, 2, 3 and 4?

**DELEGATE AASHEIM:** Yes.

**CHAIRMAN GRAYBILL:** Mr. Aasheim's motion is to pass consideration of Section 2, sub. 1, to 4, and is—until when?

**DELEGATE AASHEIM:** Until Tuesday.

**CHAIRMAN GRAYBILL:** Until Tuesday at 9:00 a.m.? It has to be at a time certain.

**DELEGATE AASHEIM:** 9:00 a.m.

**CHAIRMAN GRAYBILL:** Tuesday at 9:00 a.m. Very well. The issue is on Mr. Aasheim's motion to pass consideration of Section 2, sub. 1 to 4, until Tuesday at 9:00 a.m. So many as shall be in favor, say Aye

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. Please use the voting machines. Vote Aye on the voting machines if you're in favor of it; vote No if you're against it. All the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Vote's closed. 47 having voted Aye, 35 having voted No, we will pass consideration. Mr. Clerk, will you read Section 3 of the minority report?

**CLERK SMITH:** "Section 3, Supreme Court organization. The Supreme Court shall consist of one Chief Justice and four justices, a majority of whom will be necessary to pronounce the decision, which must be in writing and signed by the majority. The Legislative Assembly may increase the number of justices from five to seven. District judges shall be substituted for the Chief Justice or the justices in the event of disqualification or disability, in any cause, and the opinion of the district judge sitting with the Supreme Court shall have the same effect in an opinion of a justice of the Supreme Court." Section 3, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 3 of the minority report, that it adopt the same.
Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Section 3 relates, as you will note, to the composition and the organization of the Supreme Court. It provides for one Chief Justice and four associate justices. It provides that, in order to pronounce a decision, a majority of those justices must not only agree, but they must put their decision in writing and they must sign it. Here, I should like to pause and say that this is a slight change from the present Constitution, and it is designed to prevent what has been—become a rather prevalent practice of what are known as per curiam decisions, that is, decisions handed down by the court unsigned by any member and presumably, but not necessarily, one agreed to by all of the justices. This will provide that at least a majority of those pronouncing a decision will put it in writing and sign it. The second provision is simply a permission for the Legislature, if it finds it necessary in the future, to increase the number of justices from five to seven. The last paragraph is essentially the same as our present Constitution and simply provides that in the event of the disqualification or the inability of a Supreme Court justice to hear a matter, a district judge may be called in and sit in his place and that his position on that court will be as effective as though he were an elected member.

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** Mr. Chairman, I'd like—move to strike lines 25 and 26 on page 40 of this proposal.

**CHAIRMAN GRAYBILL:** Mr. Mahoney has made a—has proposed an amendment, the effect of which is to strike the sentence that says: "The Legislative Assembly may increase the number of justices from five to seven."
Mr. Mahoney.

**DELEGATE MAHONEY:** All we're doing here is—it won't be but one session of the Legislature till they be in here to go up to seven, and we just as well hold the line now, and five can get by, and if we ever get to a population of a million and a half or two, then we'll reamend the Constitution, but let's don't put it out there now, because they'll be in the next session trying to get it.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I I rise to support the amendment of Delegate Mahoney, by striking that sentence, for a different reason. My reason to wanting to strike this is to take away from the Legislature the power to pack the court and to influence it with the political philosophy of a Legislature. If we have a three-to-two split on some particular philosophy, any Legislature could, by the creation of two more justices, impose its philosophy on the court.

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman, I think that the committee's proposal to increase the number of judges from five to seven is a reasonable one, especially in view of the oftentimes advanced ages of the judges. This would give flexibility for cases where a judge is temporarily disabled or sick or unable to sit, and also opens up the possibility that the court may at some time be organized into a court of appeals, or there may be some other functions for some of these judges to serve. In the event that we do give these judges our administrative powers and other things, we're going to have to have a whole gang of these fellows in order to do their job and still write some opinions. I think that seven is a reasonable number.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I would like to submit a substitute motion at this time, starting on line 21, reading as follows: "The Supreme Court shall consist of one Chief Justice and six justices"—raising the Supreme Court now by constitutional mandate to seven members of the court.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** In other words, you are going to change the "four" to "six"—and are you then going to still eliminate the sentence, "The Legislature may increase it from five to seven"? Right?

**DELEGATE DAHOOD:** Yes, and eliminate that sentence.

**CHAIRMAN GRAYBILL:** Very well. Mr. Dahood has proposed a substitute motion which changes the number "four" to "six" in line 22 on page 40, and a comparable change on page 50, and it would still strike the second sentence, that the Legislative Assembly may increase the number from five to seven, since that would no longer be necessary.

Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, there is a very valid reason as to why the Citizens' Conference and the Montana Plan had in mind that the Legislature should have authority to increase the court to seven. The appellate load of our Supreme Court is increasing by large measures with each passing year. The increase has been such that each justice has been compelled to have on the payroll of the Montana Supreme Court a law clerk, a graduate law student. It is very true that our Supreme Court has been able to release reports and to state with some degree of pride that the court is on a current basis. But there are also many lawyers throughout the State of Montana that will submit to you that quantity of decision has been used in place of quality in decision simply because the five justices of our Supreme Court do not have sufficient time to judge the matters before them in a true, solemn, judge-like fashion. And if we increase the court to seven now, recognizing that they have this huge appellate responsibility each year, we are going to increase the quality of justice in Montana and increase the quality of our appellate process. I would think that perhaps the proponents of the majority report and the minority report can provide us with statistics, facts and figures as to the appellate burden upon the court at this time, and I would certainly appreciate their comment as to whether or not we would increase the ability of our Supreme Court to render a better quality of justice in their appellate matters if they had additional justices that could work on the appellate matters brought before them. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** The issue is on Mr. Dahood's amendment.

Mr. Davis.

**DELEGATE DAVIS:** Mr. President, would Mr. Berg yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Berg?

**DELEGATE BERG:** I yield.

**DELEGATE DAVIS:** Mr. Berg, under your disqualification, would an additional judge then have to be called in to sit on a case?

**DELEGATE BERG:** Well, you would call in a district judge, yes. If you—you're talking about now the Supreme Court?

**DELEGATE DAVIS:** Yes, the Supreme Court.

**DELEGATE BERG:** Yes, it would be a district judge who would be called in.

**DELEGATE DAVIS:** Thank you.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Dahood's substitute amendment, which has the effect of replacing the word "four" with the word "six", so we would have a Supreme Court of seven, and therefore leaving out the second sentence in Section 3. So many as are—

Oh, Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman, may I—would Mr. Dahood yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Dahood?

**DELEGATE DAHOOD:** I yield, Mr. Chairman.

**DELEGATE ARONOW:** Mr. Dahood, did you contemplate doing away with the law clerks that the Supreme Court justices now have, in order to kind of make up in cost for having the extra two justices, and having the Supreme Court justices do their own work?

**DELEGATE DAHOOD:** No, it is not my contemplation that the law clerks should be eliminated, but I think there ought to be enough justices so that all of the opinions rendered represent the considered work of a particular judge and, consequently, the judicial opinion of our Supreme Court.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I resist the amendment of Delegate Dahood. I do not believe that the State of Montana needs or can afford additional justices of the Supreme Court at the present time. My recollection that the estimated cost of the Supreme Court and the district courts of the State of Montana for the next biennium will be $1,800,000, in round numbers, and this would increase it materially, and I trust that—and I ask that when this vote is taken that there be a roll call. I ask for seconds.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen, you were up.

**DELEGATE ESKILDSEN:** Mr. Chairman, I rise in opposition to this motion. Whichever plan we accept, I am sure it's been pointed out to you very plainly that we are going to upgrade the courts. As we upgrade the courts, there is no doubt in my mind that the Chief Justice and the four justices will be able to do a lot more work than they have been doing before. That's what we're going to get paid—that's what we're paying them for. And I feel very strongly that if we want a good court, all we've got to do is give them some good helpers, and where in the world else are young attorneys going to learn how to be good judges if they don't have a chance to work in the courts to find out how? This is the reason I resist increasing it to seven, along with the money part of it.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I do not think the money argument is valid when we're determining whether or not we can increase the quality of justice. You never ration justice in a free society simply to show that you have saved something from an economic standpoint. You are concerned first of all with whether or not you are giving maximum protection to the rights of the individual. I think something should be explained to the nonlawyer delegates. The appellate system in Montana is different than the appellate system of the federal Judiciary. When you proceed to the court of last resort in the nation's capital, you do not have automatic appeal. You file what is called a writ of certiorare, and those judges will then determine whether or not, in their judgment, the issue that you present warrants their consideration on appeal. This is not true in the State of Montana. Before the Montana Supreme Court, the appeal is automatic; and in our trial courts anymore, it just seems that with the lack of certainty that's developed at the appellate level, every time there is a losing party, which is in every case, in almost every instance, if there is any substance involved, the matter is being appealed. And I would submit that if we're going to consider this matter properly, perhaps we ought to have some statistics from the office of the clerk of the Supreme Court, and perhaps we ought to have some statistics from the court itself as to what the workload is at the moment. I don't have those statistics at hand, but I do know their workload is too much, and I do know that we are getting a great deal of quantity, in many instances without quality, and consequently we don't have the certainty that the law requires, and our appellate system is breaking down at the moment because everybody is appealing the adverse decision to the Supreme Court. And I call upon the Chairman of the Judiciary Committee and I call upon the proponents of the minority plan to tell us whether or not we ought to have some statistics on this particular point and, if they have them, to give them to us now, and if they don't have them, perhaps to conduct that particular survey so that our decision on this motion can be an informed one. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, first I must tell you that, so far as the minority is concerned, we do not have the statistics as to what the workload in the Supreme Court is at the present time, but, like Mr. Dahood, having been there many times in the last year or so, I recognize that the workload in the Supreme Court is rapidly increasing. On the other hand, I disagree with Mr. Dahood as to the necessity of now in this constitutional document fixing the number of Supreme Court justices at seven. I do not believe that is necessarily justified at this time. Moreover, I am conscious of the cost, and I think the cost is properly left to the Legislature. Accordingly, the minority report leaves the increase of these justices to the Legislature because of this question of cost. Now, I agree with Mr. Dahood, cost ought not to be the price of justice, but nevertheless, as a practical fact, it is. And I disagree with Mr. Mahoney that the Legislature is going to quickly and certainly increase the number of judges from five to seven. I think that is especially true if men like Mr. Mahoney are there as a watchdog of these costs. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, I rise in support of Mr. Dahood's motion. I also support what Mr. McNeil said about a Legislature perhaps having the opportunity under the minority report to pack the court, and I think maybe the best thing for us to do is make a decision right now as to whether or not we ought to have five or seven. And on page 31 of the Judicial Report—this blue and white book—you'll find a comparison of courts in other states. I find that Alabama has nine on their Supreme Court; Arkansas has seven; California has seven; Colorado has seven; Connecticut has six; Florida has seven; Georgia, seven; Illinois, seven; Iowa, nine; Kansas, seven; Kentucky, seven. Some 30 states have more than five justices. Some of the states that have only five justices on their court also have a lower court that's known as an appellate court, which is also above the trial court level. So it appears from comparing Montana to other states, that our court does have fewer members than the majority by far of the courts of other jurisdictions. And I think that we have to be aware of this. Anyone who has read broadly knows that our courts are in trouble, not just here in Montana but throughout the entire nation. You've heard about—you've seen on television where people have stayed in jail for months and months and months and never gotten into the courthouse, never gotten a hearing. There are cases where people have sat in jails in the cities for two years because they couldn't get bailed out before they could be brought before a court for a hearing. There are cases that have laid around for four or five or six years. And in either case, whether you represent the plaintiff or the defendant in a case, justice delayed is justice denied. And we're writing a Constitution for the future. We're writing a Constitution for the next 50 or 100 years, hopefully, and I think that we ought to take into consideration that the volume of work of the courts is increasing and that decisions of the Supreme Court of Montana ought to be written by judges, not by law clerks, and we ought to, at this time, make a decision, and I would hope that it would be in favor of increasing the number of the court so that it might more adequately represent the people in the future. Thank you very much.

**CHAIRMAN GRAYBILL:** Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman, I don't know how the other members of this body feel, but as far as I'm concerned, unless we have some facts and figures to base our vote on, there is only one way I can vote at the present time, and that's against the amendment.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman, I think the 76 of the delegates who are not lawyers must feel the same position that I'm in right now. I really think that there is one vital statistic that surely one of you 24 lawyers should be able to give us, and that is, how many opinions were rendered by the Supreme Court last year?

**CHAIRMAN GRAYBILL:** Mr. Schiltz, can you answer that question?

**DELEGATE SCHILTZ:** I can't answer that, but I can say that the Style and Drafting Committee met in the back of the Supreme Court library from about the 18th to the 9th of February, and the lights were out in there all that three weeks, which isn't to say that the Supreme Court isn't busy. The Supreme Court is busy. They just happened to hit a little slack period in there. No, I agree with Mr. Dahood. I think that court should be increased. And I think if we can get the statistics, and I don't think we can get them on Saturday, that if we can get the statistics, they would establish, according to the report the Chief Justice makes once a year to the Montana Bar Association, I think they would show that their workload increases substantially each year. I also agree with Mr. Dahood, that, even if this would cost a considerable amount of money more, in the interests of justice it's certainly worth it. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Siderius.

**DELEGATE SIDERIUS:** I kind of question as to how busy the court is, myself, because all the time I've been here I've noticed them holding court about two days while I've been here, and that's about five weeks now. Now, I don't know—there's probably a lot of other procedures along with that. I'd like to have one of these lawyers explain some of that to me.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I'd like to explain that, but first I want to say that I agree with the 76 nonlawyer members that we do need facts, figures and statistics. It's rather deceptive to sit back and determine whether or not the court is loaded or underloaded (Laughter)—with respect to work, simply because I don't think the nonlawyer members understand precisely how a Supreme Court functions. Now, they might have, say, 200 or 300 cases in the course of a year. That does not tell you just exactly how much burden is upon them. One case may have a 400-page transcript. That represents all the testimony that has been produced in the lower courts. They will have all the pleadings with it; they will have all the briefs. And if you have 200 or 300 appeals during the course of the year, just how much time will those five justices have actually to go over every transcript, go over all the testimony, go over all the briefs, and to do all the work that is required to have an informed type of decision? Now, Mr. Holland has placed before me an indication of the appeals that were filed in 1971. Now, appeals filed totaled 198, and I—and that does not tell us exactly the full content and the full extent of that work, because we don't know the type of appeals that they have had. But I can think of several appeals that we're involved in where the transcripts do exceed 400 pages. And it takes a great deal of work to go over all that testimony, to conduct hearings, to go over the briefs, to reason it out and come forward with the type of decision that gives the type of quality and certainty that's required to make the law the type of living thing that's required to allow society to progress so that lawyers can predict what the Supreme Court would do in a particular case and in that fashion, quite frankly, reduce the number of appeals. But I would think that probably this matter ought to be passed over until we can have some additional statistics on it and determine just precisely what the attitude of the court might be with respect to whether or not there should be additional help that we can have the best type of appellate process. And I would like to move at this time that this matter be continued until Tuesday and be brought up at the appropriate time when the supporters of this motion and the mover of this motion can present facts and figures to this body.

**CHAIRMAN GRAYBILL:** Mr. Dahood, are you trying now to postpone your own motion?

**DELEGATE DAHOOD:** Mr. Chairman, I think in fairness I should move to postpone my own motion. I think we do have to have facts and figures. Perhaps they will sustain my position, perhaps they will not. I know, as a matter of integrity, they should sustain my motion. I know that our appellate court requires more time to do a better job. I hope those statistics are going to sustain the belief that I have and that's shared by many of my colleagues before the bar of this state.

**CHAIRMAN GRAYBILL:** All right, let's make a motion to pass consideration until 10:30 a.m., on Tuesday. That all right?

**DELEGATE DAHOOD:** That is satisfactory. Mr. Chairman, I move at this time that the matter be passed until 10:30 on Tuesday, next week.

**CHAIRMAN GRAYBILL:** Mr. Foster, for what purpose do you arise? Do you want to debate that motion to postpone?

**DELEGATE FOSTER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE FOSTER:** Mr. Chairman, I think we have a perfectly good solution before us. The solution is the report of the minority committee. I think they have considered this. I think they have considered the need for the Legislature to investigate the whole area of whether we need more justices in the Supreme Court, and I submit that we're not here to legislate. They have given us the logical conclusion. They have given us the opening for the Legislature in the future to provide for additional justices if needed, and I submit that for us to increase the number of Supreme Court justices—

**CHAIRMAN GRAYBILL:** Just discuss the issue, not how many we ought to have.

**DELEGATE FOSTER:** Well, I feel that the solution is that we should leave it to the Legislature as provided by the minority report. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mr. Dahood's motion to pass consideration of Section 3 until 10:30 a.m. on Tuesday, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as shall be against, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. Vote Aye if you're in favor of passing; No if you're in favor of not passing. Have all of the delegates voted?
(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?
(No response)

**CHAIRMAN GRAYBILL:** 61 having voted to pass and 19 having voted not to pass, the motion's adopted. Now, ladies and gentlemen, I think you should have the philosophy of the Chair. It is that we should finish the Judiciary Article by Tuesday night. We have now adopted one section and passed two. The Chair does not intend to work you Monday, does not intend to work you tonight, but I do intend to continue for awhile, so will you please read Section 4.

**CLERK SMITH:** "Section 4, District Court Powers. Original jurisdiction of all matters and causes, both civil and criminal, including the power to issue, hear and determine original and remedial writs is vested in the district courts, but distribution of concurrent jurisdiction with other courts may be provided by law. Until otherwise provided by law, appeals from inferior courts must be tried anew in District Court. District Court shall also have jurisdiction to review decisions of administrative boards and commissions, and they shall have such additional jurisdiction as may be delegated by the laws of the United States and the State of Montana. The Supreme Court and District Court process shall extend to all parts of the state." Section 4, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I move that this committee, after having under consideration Section 4 of the minority article, when it does arise and report, adopt the same.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** We are concerned here now with the jurisdiction of our principal trial court, the District Court. Now, this particular section has been whittled down by the minority considerably, but it's not an innovative or fooling around with the jurisdiction of the District Court. To the contrary, it is an effort to reduce it, to make it concise and make it broad. Now, the District Court jurisdiction, as it reads today, is essentially the same in the first paragraph. It gives to the District Court jurisdiction in all cases in law and equity and it uses, as we do, "in all cases." Now, the word "all" is an all-inclusive term, and the purpose of using that word "all" is to be certain that this principal trial court does have a jurisdiction, an exclusive jurisdiction, of all litigation at the trial level. We have deleted from the existing Constitution the reference to all of the various types of cases that are enumerated there, because it doesn't add anything and, if anything, it may be limiting. It may be confusing. What the existing Constitution says and what the majority report says is, it has jurisdiction in all cases in law and equity, including—and then it goes down and it specifies all of the various types of cases that may be included. But we're looking to the future now. We don't know and we can't say, no lawyer here can assure you that the various types of cases enumerated within the old Constitution and still contained in the majority report will be adequate for full adjudication of all rights, and what a shame and a colossal mistake it would be for a person to have a wrong and no remedy because the remedies have been so categorized and specified and this particular wrong is not included. This would be a colossal error. To avoid that possibility, we have done just like almost all other states, just like the United States Constitution, we've said it has original jurisdiction in all cases, both civil and criminal. Then we add, so that there's no question, about the authority of the District Court to issue original and remedial writs. That covers the waterfront. It covers every conceivable known writ today. If, in the future, it becomes necessary to recognize—perhaps through the Legislature—a new writ that will accomplish purposes unknown today, the jurisdiction is there to do it. Now, with respect to the appellate jurisdiction of the District Court, we were concerned that there might be some hiatus here, so we said that, until otherwise provided by law, appeals from inferior courts must be tried anew in the District Court. Now, the language that we're employing here is not new at all. It's contained within the statute. It pertains to appeals from the Justice Court to the District Court, and it does this—it permits an appeal from the Justice Court to the District Court without cost of transcript where the case will be tried anew. It is—this situation can often occur where you try a case in the Justice Court, you think you're going to win, and then you lose. Now, if you were required to have a transcript, if the Justice Court was a court of record and you had to prepare a transcript and go on up to the District Court, you are involved with immediate, extravagant expense immediately. This provision, which permits a trial de novo—or as the wording is, "tried anew"—avoids that. The District Court is also given the jurisdiction to review decisions of administrative boards and commissions. This is becoming more and more a problem in modern society and will become more complex as time goes on. There ought to be some judicial—some place for judicial review of actions of boards, because, most frequently, the arbitrary—this in actions of boards of administrative agencies, this is frequently where you get arbitrary and capricious results, and it is essential that there be some power of review by the Judiciary to avoid the hardship of an arbitrary decision. Finally, we have broadened the jurisdiction insofar as it may be delegated by the United States. Our present Constitution says that district courts shall have jurisdiction for naturalization purposes, as delegated by the laws of the United States. We contemplate that in the future there may be other areas of jurisdiction delegated by Congress. We want the District Court to be in a position to handle that kind of a case. Finally, we have provided that district courts and the Supreme Court—that their processes will extend to all of the State of Montana. In other words, we didn't want any possible construction that a subpoena or a summons issued out of the District Court might be limited just to the district that it occupies, but rather, that it extend throughout the entire state. That is not new or novel.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. President, I wonder if Mr. Berg would yield for a series of questions relative to this.

**DELEGATE BERG:** I yield.

**DELEGATE HOLLAND:** Specifically, Ben, what I'm worried about is this phrase "district courts shall also have jurisdiction to review decisions of administrative boards and commissions". Specifically, what type of review do you have in mind?

**DELEGATE BERG:** Well, Dave, I think you and I both agree that there are many instances in the present-day practice where you appear before boards, where sometimes there is or is not a transcript, where, if there is a transcript, by the time it gets ready to go to the District Court, it's been sadly depleted. These are problems that arise in review of administrative actions which I think are going to become more complex as the time goes on. I want Judicial review.

**DELEGATE HOLLAND:** You want Judicial review, but on a de novo basis?

**DELEGATE BERG:** Yes. I would actually prefer it oftentimes on a de novo basis, but I haven't limited it that way. If there is an adequate transcript and the Legislature so provides, it can go up on a transcript basis.

**DELEGATE HOLLAND:** It seems to me that we're going to have a review, and I certainly agree with you we need review on these things, that we should either specify it's de novo—that is, the court looks at the question anew—or else that it's a simple review, as they sometimes do, and I would like to—I'm going to make an amendment—

as soon as we get finished, I'm going to make an amendment that it be one or the other so that we know specifically what it means.

**DELEGATE BERG:** Well, I would say in that regard, I would rather have the broad jurisdiction so that the right of review is unquestioned and unlimited.

**DELEGATE HOLLAND:** I have one more question—

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Do you know of any other constitution that has a similar provision?

**DELEGATE BERG:** To be very honest with you, Dave, I cannot find any constitutions that have this exact language, but there are many and I can refer them to you, which do give jurisdiction to review boards and commissions, and they generally, they spell it out a little more clearly than I have. I have purposely made it broad and flexible, but I can give you those that do, if you like.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Will the gentleman, Mr. Berg, yield to a question, please?

**DELEGATE BERG:** I yield.

**DELEGATE SCHILTZ:** Mr. Berg, is it your intention, by the language about which Mr. Holland was just questioning you—"district court shall also have jurisdiction to review decisions of administrative boards and commissions"—is it your intent with that language to have an automatic review on all district—on all administrative decisions?

**DELEGATE BERG:** I may put it this way. Initially, when I drafted this, I added the clause "as provided by law", then I felt that that was giving to the Legislature a power over the jurisdiction of the District Court, and I basically am opposed to that because I believe that all justiciable—all matters of controversy, whether they be before boards or commissions, ought to be reviewable in courts. I'll put it that way—

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE BERG:** —therefore I did not limit it.

**DELEGATE SCHILTZ:** I just want to be sure, from the standpoint of Style and Drafting, that you don't intend—"and additional jurisdiction as may be delegated by the laws" et cetera—to qualify that statement.

**DELEGATE BERG:** I did not, because I specifically left out at that point "as provided by law".

**DELEGATE SCHILTZ:** Now, will the gentleman yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Berg?

**DELEGATE BERG:** I yield.

**DELEGATE SCHILTZ:** You don't provide the court of jurisdiction for this appeal, and I would assume that, most boards sitting in Helena, that we're going to overload the First Judicial District. Have you thought of that?

**DELEGATE BERG:** Well, I consider that District Courts have original jurisdiction throughout the state, and if it's overloaded in Helena, we'll be happy to have them in Bozeman. That is possible. It is altogether—no question about the jurisdiction of the District Court in Bozeman or Great Falls or Helena hearing any one of these matters, because they all have original jurisdiction with process that extends throughout the state.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman, I move at this time an amendment to Section 4, line 11, following the word "commissions" and before the word "and" to insert the following language: "and the issue will be tried anew in the District Court."

**CHAIRMAN GRAYBILL:** Very well. Mr. Holland has proposed an amendment on line 11, after the word "commission", by adding "and the issue will be tried anew in the District Court", the purpose of which is to say for sure that the administrative board or commission hearing will be tried anew in court.

Mr. Holland.

**DELEGATE HOLLAND:** Did you want me to yield—

**CHAIRMAN GRAYBILL:** Mr. Berg, do you want the floor?

**DELEGATE BERG:** I rose for the purpose of a question. Will you yield, Mr.—

**DELEGATE HOLLAND:** I yield, yes.

**DELEGATE BERG:** Would you substitute instead "may" for "will"? And that then will give you the alternative of a trial anew or a trial by transcript with record if it's available.

**DELEGATE HOLLAND:** Well, I want to decide it one way or another, whether it's a trial de novo or a trial anew, or else if it's going to be a review one way or the other, and I think we—the sense of my amendment will be that it will be a new trial in the District Court, and for that purpose I will not substitute the word "will", because I—as a matter of fact, I will substitute the word "will" to "shall" and change my amendment to read: "and the issue shall be tried anew in the District Court".

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** This language in the minority statement has bothered me right from the start. I have discussed this matter with Mr. Berg, who is the principal author of the minority position, and it seemed to me that this will put the whole Judicial Article regarding the power of the District Court in jeopardy, because I don't think anyone will know exactly what it—at least, I don't know exactly what it means, unless there is some clarifying language. Many of these boards, as Mr. Berg has indicated, many of these boards receive evidence in a haphazard manner. Many do not transcribe records. Many, many times a person goes before these boards without an attorney. The hearings are put on without the aid of counsel, and many times valuable rights, such as the right to a license to practice a profession—perhaps plumbing, perhaps beauty operator, perhaps many other things, all of which I don't know—and then when these people are aggrieved, they go to an attorney, there's no transcript, no one was there to protect their record, and then when it comes time to getting the review in the District Court, you find you're limited to going back to the record and finding some error in the record and there is no record. There being no record, it's presumed that the record is sufficient. And I feel strongly that many people are deprived of valuable legal rights in this process and that—as with appeals from inferior courts, I presume by that they mean Justice Courts—many times when they go to have the matter thrashed out, it's just too late. And so I urge this amendment for review of the administrative boards and commissions—shall be tried anew, the evidence will be reheard by the District Court and a decision based upon the evidence received at that level if the person feels he is aggrieved. And I feel that very often these administrative boards and commissions are, because of their nature—the people are deprived of their rights without due process.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, I would like to make a substitute motion that the entire sentence be deleted. I feel that this is a glaring example of legislative detail. I hope it is realized that we are expecting the District Courts to try all zoning matters, weed control matters, every other kind of silly thing that comes up under any board, bureau or commission, and the result would be to clog the courts and create a first-class administrative and legal disaster. Now, it seems to me that it is perfectly clear that the courts have whatever jurisdiction the Legislature, the law, puts upon them, provides for them from time to time as the need arises, and let us not try to build the whole thing in the Constitution. Here's where I want to stick to my fundamental detail. Let's not get all this spinach in the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Garlington has made an amendment that strikes the sentence beginning on line 9 on page 41: "District Courts shall also have jurisdiction to review decisions of administrative boards and commissions, and they shall have such additional jurisdiction as may be delegated by the laws of the United States and the State of Montana."

Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I rise with enthusiasm to support my fellow delegate from District 18 on this. I think he's absolutely right. If Mr. Berg believes what he said in his original statement, he ought to support it, too.

**CHAIRMAN GRAYBILL:** Mr. Berg. You have the floor, Mr. Berg.

**DELEGATE BERG:** Mr. Heliker must misunderstand and must misinterpret what I say. Now, with all due regard to Mr. Garlington, in Bozeman we frequently do try decisions from zoning boards. We have that problem prevalent right now, and I simply want to assure that the District Court has the unquestioned power to hear and review those disputes before boards, where I feel people often do not get what I would call "due process" in the course of presenting it. Now, it is true that the Legislature frequently does provide for review of those boards. In the case of zoning, an appeal from the board of appeals is done by a writ of certiorari. That's done by statute. The Legislature has extended that authority to the courts. But my point is this: that all disputed matters of a judicial character ought to be decided in the Judicial Branch of the government and not exclusively and finally before boards or commissions of the administrative branch. And for that reason, I include it here, because I think it's appropriate.

**CHAIRMAN GRAYBILL:** Mr. Brown.

**DELEGATE BROWN:** Mr. Holland, will you yield?

**DELEGATE HOLLAND:** I'm glad somebody asked me a question. Yes, I'll yield, Mr. Brown.

**DELEGATE BROWN:** In making that amendment, would you now take a rate hearing before the Public Service Commission that might go on two or three months and then appeal that to the District Court and have a complete new hearing (Inaudible).

**DELEGATE HOLLAND:** You bet, you bet. I think those rates have been raised disgracefully time and time again, and I'd like very much to have a full review in the District Court, Mr. Brown.

**DELEGATE BROWN:** I don't want you to—

**DELEGATE HOLLAND:** I don't even think that rate commission should be deciding the matter. I go beyond—

**CHAIRMAN GRAYBILL:** Mr. Brown, your question is out of order. It's not on the amendment, the substitute motion of Mr. Garlington to delete the sentence.

Mr. Wilson.

**DELEGATE WILSON:** Mr. President, I hesitate to get up here and get embroiled amongst the lawyers, but I'm a little bit apprehensive, having served on administrative boards and commissions, to just what this would entail. I see a lot of problems developing with the clogging of the court system on this type of issue, and I would like to ask Mr. Schiltz if he would yield to a question, to explain this for me.

**DELEGATE SCHILTZ:** I yield.

**DELEGATE WILSON:** Would you explain what would be involved here, Mr. Schiltz?

**DELEGATE SCHILTZ:** Well, on the motion of Mr. Garlington, the entire sentence starting with "District Courts shall also have" would be deleted, so there would be no problem such as you speak of, Mr. Wilson.

**DELEGATE WILSON:** Mr. President, I support Mr. Garlington's motion.

**CHAIRMAN GRAYBILL:** Mr. Wilson, the court feels constrained to point out that the first paragraph of Section 4 still gives the Legislature the power to make any administrative matter remedied in the courts.

Mr. Cate.

Very well. The issue is on Mr. Garlington's substitute motion to delete the sentence that says: "District Courts shall also have jurisdiction to review decisions of administrative boards and commissions, and they shall have such additional jurisdiction as may be delegated by the laws of the United States and the State of Montana." So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. Please vote on the voting machines. So many as in favor, vote Aye; so many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** 42 delegates having voted Aye, 32 delegates having voted No, the motion to delete the sentence carries. Very well. The issue is on Section 4, as amended. Is there other discussion?

Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, I think that the action we just took was kind of rash, because we knocked out naturalization in district courts, as well as, perhaps, the question as to whether or not courts can even review administration—

**CHAIRMAN GRAYBILL:** Mr. Cate, I can't hear you. That's better. Try again.

**DELEGATE CATE:** And I think that at a later time we ought to move to reconsider. But at this time, I would like to discuss another sleeper in here, and that's on page 41, line 8, the first five words: "Until otherwise provided by law". One of the things that I didn't like about the Montana Plan was that the decisions of the courts below the District Court were not entitled to trial de novo in the District Court. You would have had to appeal these decisions to the Supreme Court of Montana in order to get a reversal of them, and under the present system—let's take the police court, and by police court I mean the police's court. In the police court, if you get a ticket, if you get a ticket and you go to court and you're found guilty by the police judge, you have the right today to appeal to the District Court which covers that particular police court. You don't have to go to the Supreme Court of Montana in order to get a new trial. These five words would permit the Legislature to change that system so that if you got a ticket in police court and you didn't think it was right, you would have to go all the way to the Montana Supreme Court with an appeal in order to get a new trial. Now, I think that that's a pretty dangerous thing to play around with. I think we—I don't mean to be a stick-in-the mud and I'm not a stick-in-the-mud—I don't think there are many people who would classify me as conservative—but I'm a little bit afraid of this, because what it could mean is that these police courts, for instance, could have this type of power that you—and I think police courts are notoriously unjust—and not because I lose most of the time in there—but the system is built against the citizen in those courts, and usually the word of the policeman is taken over the individual without question, and I think anybody that's had experience in police courts would agree with that. And I hate to see that right of appeal to the District Court, with trial de novo in the District Court, taken away. And although this doesn't do it, it provides the method by which it might be done, and I think we ought to preserve that fundamental right. And so I would move to strike from Section 4, line 8 on page 41, the five words "Until otherwise provided by law". Thank you.

**CHAIRMAN GRAYBILL:** Very well, Mr. Cate, your motion to strike the words "Until otherwise provided by law" is accepted.

Mr. Holland, first.

**DELEGATE HOLLAND:** Mr. Chairman, I rise in support of Mr. Cate and also my brother, Garlington, as we lawyers refer to ourselves. This morning when I gave my great speech about the fact that we had something that worked pretty well for 72 years and we had no complaints about it, why fool around with it, why, evidently Brother Garlington and Brother Cate paid very little attention. They are beginning to take a pretty hard look at the minority definition of courts and beginning to realize that they may have well run into something that might cause some future trouble, and I can see it's going to cause a lot of trouble. But that's neither here nor there. I think Mr. Cate is absolutely right, that we have to be very careful that this language is preserved and the rights of appeal in the police court is preserved, and I rise in support of him and urge you to vote to make sure that this is continued.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** We have just now eliminated naturalization powers from the District Courts, which have been there since 1889, courtesy of the surgery that is going on here. Now, this language, "Until otherwise provided by law", was put in there for a very specific reason. It gives flexibility to this judicial system. Now, if you want to lock it in and make it forever impossible to do anything about the appellate procedure from the lower court to the District Court, go right ahead and do it, but let me tell you this—this language was put in there so that if in the future it becomes desirable, for instance, to use the magistrate system, somewhat similar to what was used in the Montana Plan, not advocated now by the minority, but if in the future the Legislature wants to make this a two-tier system as it is employed in many other states, this kind of language opens it up. But if you take it out, the only way you're ever going to do that is by amendment. Now take your choice. Do you want a flexible system, or do you want it locked up so it can't be changed? You're getting down into some rather vital places.

**DELEGATE AASHEIM:** Mr. President, could a simple citizen ask a question? (Laughter)

**CHAIRMAN GRAYBILL:** Mr. Berg—you don't have the floor yet, Mr. Aasheim. Mr. Berg, would you yield to a question from the Chair?

**DELEGATE BERG:** I yield.

**CHAIRMAN GRAYBILL:** The Chair is concerned about your statement that we have eliminated naturalization, because, as a lawyer, I don't understand that. Do you mean to say that unless we write in here that we have—I understand we have eliminated the language you had in to cover it, but do you mean to say that if we don't write language into this Constitution, that we can't accept jurisdiction from the United States Congress in the District Courts?

**DELEGATE BERG:** Well, I call your attention to Section 11 of the old Constitution and—see if I can read it, since I've written over it so many times. I've written it out so many times I can't read my writing, but—let me see yours. It says now in the old Constitution "and said court shall have the power of naturalization and to issue papers therefor in all case where they are authorized so to do by the laws of the United States." I felt that if the Constitution felt that such language had to be there to enable acceptance of the jurisdiction, it ought to be retained. And I take it now that since—and I tried to broaden that to cover any other kind of jurisdiction that Congress might want to delegate in that last sentence. I didn't limit it just to naturalization.

**CHAIRMAN GRAYBILL:** But—would you yield to another question?

**DELEGATE BERG:** Yes, sir.

**CHAIRMAN GRAYBILL:** Is it your interpretation that unless we give them that power, after you've given them the power in the first part of that section, that they simply could not accept jurisdiction from the United States Congress?

**DELEGATE BERG:** Well, I feel that since the old Constitution starts out with the same broad language, I didn't want to be too surgical here, because I felt that if it was necessary in the old Constitution to do that, there must be good reason. Not knowing reasons otherwise, I left it in.

**CHAIRMAN GRAYBILL:** Is it your interpretation that Mr. Cate's proposal, for example, would make it impossible to handle naturalization in the District Courts?

**DELEGATE BERG:** It was Mr. Garlington's motion that was so destructive. (Laughter)

**CHAIRMAN GRAYBILL:** Very well. Mr. Aasheim had something.

**DELEGATE AASHEIM:** Mr. President, I'm going to wait until the legal fraternity gets their arguments settled, and then I'm going to ask mine.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman. Mr. Berg, I would disagree with you that by taking out this section we would lock this system forever. As I read it, you could still create as many courts inferior to the District Court as you might want to, but the principle that you would have the right of trial de novo in District Court from those lower courts would still be there. Now, if we're going to establish someday a magistrate plan, where the magistrate does not have to be a lawyer, which is like the JP system today and the Police Court system today, I think that we ought to protect that right to trial de novo in District Court before a man who is a lawyer, who knows what the law is, and that's a district judge. And so, I would disagree with you that we are locking this system in by taking those words out. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I am not sure that this little legal debate is getting across to the lay people in this group, and I would like to say very briefly that what Mr. Cate is proposing is that you, as citizens, have an automatic appeal from a Police Court or a Justice of the Peace Court to the District Court. If you are aggrieved there, you have a right to an appeal. Now, the way it is written, you only have that right—the way it has been written in the minority report, you only have that right to appeal until otherwise provided by law, which amounts to an invitation to the Legislature to take away that automatic right. I really think you ought to know that.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Cate's motion to strike from line 8 in Section 4 the language "until otherwise provided by law". So many as shall be in favor of that motion, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and so adopted. Very well. The issue is on Section 4 as amended. Is there further discussion? Mr. Arness.

**DELEGATE ARNESS:** Is a motion to amend in order?

**CHAIRMAN GRAYBILL:** Certainly.

**DELEGATE ARNESS:** I move to amend Section 4, beginning at line 5, by deleting the word "but" and continuing deleting the words through line 6, through line 7, ending with the word "law". And, further, to delete at line 14 of Section 4 the words "and District Court" appearing after the word "Court" at line 15, so that the last sentence now in that paragraph would read: "The Supreme Court process shall extend to all parts of the state." And, above, the sentence reading: "but distribution of concurrent jurisdiction with other courts may be provided by law" is deleted. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Arness, are these two amendments related?

**DELEGATE ARNESS:** Yes, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Mr. Arness has an amendment that takes out the last clause of the first paragraph of Section 4—"but distribution of concurrent jurisdiction with other courts may be provided by law". And it takes out the words "and District Court" in line 14. It's allowed. Go ahead.

**DELEGATE ARNESS:** I presume that the other courts that are referred to by Section 4 are the Justice Courts. At the present time, these are township courts and have a very limited jurisdiction. It's also very easy to come into these courts. As this section is now written, it would be very possible for a litigant to harass someone all the way across the state with a 50 or $60 suit in Justice Court by having the summons issued out of Justice Court in Libby, for example, to be served in Ekalaka. I'm sure that that can't be intended by the authors of this proposal, but it appears to me that that is presently the effect. By deleting these provisions, the results could no longer be obtained. I'm sure that, at least in the Constitution, we don't want to authorize the Justice Courts to have jurisdiction all the way across the state, and that's the purpose of this amendment. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Arness would yield for a question?

**DELEGATE ARNESS:** Yes.

**DELEGATE HOLLAND:** It would seem to me that, if your amendment is granted, that the exclusive jurisdiction of all trials would be in the—restricted to the District Court and no other court—Justice Court, Magistrate or Police Court—would have any jurisdiction at all, and of course, I'm—one other question; I don't know what the minority court [report] means by "process", but if "process" in your definition includes subpoena, you're limiting the power of the District Court to subpoena only within their own district, if you consider that process.

**DELEGATE ARNESS:** That would be the effect of the amendment. That's right. That's what this would do. Otherwise, the way it's written, the Justice Court would have jurisdiction throughout the state, and I think that, although the amendment may restrict the District Courts, it would be worse to have the Justice Courts in their present condition have powers which would ordinarily be ascribed to the Supreme Court.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Will the gentleman, Mr. Arness, yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Arness?

**DELEGATE ARNESS:** Yes, sir.

**DELEGATE SCHILTZ:** As I understand it, Mr. Arness, you are deleting "and District Court" from line 14, and it seems to me—and correct me if I'm wrong—I don't know what its connection is with our other deletion—but it seems to me that a summons would not—you'd take away the effect of a District Court summons anywhere but in its own county, I assume.

**DELEGATE ARNESS:** Yes, that's the way that I've amended it. It would seem to me, otherwise, that a Justice Court would have jurisdiction that would be coequal with the boundaries of the state. Now, maybe there's some other way to approach this, but it seems to me that it would be more important that we prevent the Justice Courts from having such a high—or such powerful jurisdiction, rather than—that we limit the District Courts. Possibly this should be corrected in some other way; I don't see exactly how that should be done.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Cate—or Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that we pass any further consideration of Section 4 until 2 o'clock on Tuesday. This—Mr. Chairman, this is much too complicated a problem. I just can't conceive that Mr. Arness is serious that he wants to take away the service of process for the District Courts beyond the limits of the county. And I think we're all just a little too rummy to find out what he's talking about.

**CHAIRMAN GRAYBILL:** The motion to pass consideration until Tuesday at, what? 11:00?

**DELEGATE SCHILTZ:** 2 o'clock.

**CHAIRMAN GRAYBILL:** Oh, at 2:00? Well, let's make it 1:00. At 1:00—is that all right, Mr.—will you accept that? 1:00?

**DELEGATE SCHILTZ:** I thought we had—

**CHAIRMAN GRAYBILL:** No, we've got 9:00, 10:30 and now 1:00. (Laughter) All in—

Mr. Harper, do you want to argue?

**DELEGATE HARPER:** No. This may not be germane here. But would somebody raise a flag when you get onto anything that has to do with Small Claims Court? (Laughter) Well, that's where—

**CHAIRMAN GRAYBILL:** Mr. Harper, we're there now. All right.

**DELEGATE HARPER:** I'm wholeheartedly for passing this thing over then, because I've got to get with somebody and find out if a citizen can get his licks in here anywhere. (Laughter)

**CHAIRMAN GRAYBILL:** Mr. McNeil, would you like to debate the motion?

**DELEGATE McNEIL:** Mr. Chairman, for both Mr. Arness and Mr. Harper, your concerns are premature as, by voice vote on Section 1, we've abolished Justice Courts.

**CHAIRMAN GRAYBILL:** All right. Well, I think that was not particularly germane, so I take it we're ready to vote on Mr. Schiltz's motion to pass consideration of Section 4. All those in favor, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No (No response)

**CHAIRMAN GRAYBILL:** Now, the Chair would like to observe that this is, of course, a complicated area and you must either choose to become educated or you must choose to follow one of the two leads, the majority or the minority report, and I think we have now demonstrated, by passing the first three major sections that we tried to debate, that we could be here all next week or next two weeks. So, either make up your mind to become educated or find some bellwether to follow, and we'll try and get through this on Tuesday rather rapidly. Now, the Chair is about to entertain a motion to recess, but if there's other business, please bring it up.

Mrs. Bugbee, for what purpose do you rise?

**DELEGATE BUGBEE:** Mr. Chairman, would it be possible for someone—one of the lawyers—to be assigned to interpret what the other lawyers have been saying after they've said it. (Laughter)

**CHAIRMAN GRAYBILL:** Mrs. Bugbee, the Chair will rule that that would be an impossible task. (Laughter)

Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, I don't want you people to forget the People's Plan, because I think that—

**CHAIRMAN GRAYBILL:** Mr. Cate, you're out of order now. I'm not going to take any more. If you have any purpose—We'll get to the People's Plan.

All right, Mr. Eskildsen, will you explain the way we're going to do this.

**DELEGATE ESKILDSEN:** (Inaudible)

**CHAIRMAN GRAYBILL:** We've just learned [illegible] we're going to do this (Laughter) Mr. Eskildsen, would you proceed?

**DELEGATE ESKILDSEN:** Mr. Chairman, I move the Committee of the Whole rise and report progress and beg leave to sit again.

**CHAIRMAN GRAYBILL:** The motion is to rise and report progress. All in favor, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** So ordered.

Mr. Kelleher.

**DELEGATE KELLEHER:** (Inaudible)

(Convention in session—President Graybill presiding)

**PRESIDENT GRAYBILL:** The clerk will read the title of the committee report.

**CLERK SMITH:** "February 26th, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 4 of the Committee on Judiciary, recommend as follows: On motion of Delegate Graybill, duly carried, the committee postponed considering Style and Drafting report on General Government. On Holland's motion, duly carried, Rule 51 was suspended so that the majority and minority reports could be presented and a vote then taken on which one committee wishes to consider section by section. At 11:[illegible] a.m., committee stood in recess until 1:15 p.m.—"

**PRESIDENT GRAYBILL:** Mr. Clerk, is that the title of the report?

**CLERK SMITH:** No.

**PRESIDENT GRAYBILL:** Very well. Mr. Eskildsen, will you make a motion. Unless there's objection, we won't read the entire report.

**DELEGATE ESKILDSEN:** Mr. Clerk, would you read the "rise and report" part?

**PRESIDENT GRAYBILL:** Just read the title.

**CLERK SMITH:** "That the committee rise and report progress and beg leave to sit again. Signed: Graybill."

**DELEGATE ESKILDSEN:** Mr. President, I move the adoption of the Committee of the Whole report.

**PRESIDENT GRAYBILL:** The motion is to adopt the Committee of the Whole report. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, Nay.

(No response)

**PRESIDENT GRAYBILL:** Is there some trouble, Mr. Monroe?

**DELEGATE MONROE:** No.

**PRESIDENT GRAYBILL:** Would you please get your seat, then. Order of Business Number 11, Announcements. The Chair wishes to announce, so that you may tell your wives if they're here, that the Wednesday luncheon for women has been postponed until Thursday. They may need to know that to make plans. The Chair also wishes to announce that the Chair has checked with Mr. Justice Castles. The court heard 240 matters last year. You may want to write this down. They issued 160 opinions. This was an increase of one-third over the volume of business the year before. Are there other announcements?

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman [President], I'd like to announce a meeting of the Committee on Style and Drafting at 8 o'clock on Tuesday. We've been losing about half our time because so many people arrive late that we can't achieve a quorum. I urge you to get there on time.

**PRESIDENT GRAYBILL:** Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. President, in case some of you might have had this invitation lost in the shuffle of papers, I would like to read: "If you aren't afraid of a Madison Avenue image, we would like very much to have you and your wife or husband come to our home at 720 Madison on March 1st at 6:30 for a cocktail supper." The house was built by Governor Hauser in the territorial days, and we bought it from Carroll College about a year and a half ago to revise, alter or amend. Please let me know if you can come. We'd be delighted to have all of you.

**PRESIDENT GRAYBILL:** Other announcements?

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President. Pursuant to the general powers vested in Montana Constitutional Convention, and in accordance with the provisions of Section 7-6 of the Enabling Act (Chapter 296, Laws of 1971), the Montana Constitutional Convention shall recess temporarily until 9:00 a.m. on Tuesday, February 29, 1972.

**PRESIDENT GRAYBILL:** The motion is to recess until 9:00 a.m. on Tuesday morning. All in favor, please say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, Nay.

(No response)

**PRESIDENT GRAYBILL:** We stand in recess.

(Convention in recess at 5:42 p.m.)

February 29, 1972
9:00 a.m.

**Thirty-Fourth Day**

**Convention Hall**
**Helena, Montana**

**PRESIDENT GRAYBILL:** If you'll all rise, we'll have the Pledge of Allegiance led by Mr. [illegible]

(Delegates give pledge, with Delegate Blaylock leading) I pledge allegiance to the Flag of the United States of America, and to the republic for which it stands; one nation, under God, indivisible, with liberty and justice for all.

**PRESIDENT GRAYBILL:** Delegate [illegible] will lead us in an invocation.

**DELEGATE BURKHARDT:** Let us pray. At this particular time, Oh God, we're grateful [illegible] had both a sense of humor and good judgment. He [illegible] the lawyers of his time in the [illegible] and said, "You strain out the gnat and swallow the camel." Somehow, may we have good humor and good judgment for the work of this day. Amen.

**PRESIDENT GRAYBILL:** We'll take roll this morning by voting Aye on the voting machines. Please vote Aye on the voting machines.

**CLERK HANSON:** Delegate Anderson, Oscar O.; Delegate Barnard; Delegate Berg; Delegate Blaylock; Delegate Blend; Delegate Brown; Delegate Bugbee; Delegate Etchart; Delegate Felt; Delegate Harrington; Delegate Nutting; Delegate Etchart; Delegate Felt; Delegate Nutting.

**PRESIDENT GRAYBILL:** Would you repeat the absentees.

**CLERK HANSON:** Delegate Etchart, Delegate Felt, Delegate Nutting, Delegate Harrington.

**PRESIDENT GRAYBILL:** Very well, take the vote.

| | |
|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Present |
| Aronow | Present |
| Artz | Present |
| Ask | Present |
| Babcock | Present |
| Barnard | Present |
| Bates | Present |
| Belcher | Present |
| Berg | Present |
| Berthelson | Present |
| Blaylock | Present |
| Blend | Present |
| **Bowman** | **Absent** |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Present |
| Cate | Present |
| Champoux | Present |
| Choate | Present |
| Conover | Present |
| Cross | Present |
| Dahood | Present |
| **Davis** | **Absent** |
| Delaney | Present |
| Driscoll | Present |
| Drum | Present |
| Eck | Present |
| Erdmann | Present |
| Eskildsen | Present |
| Etchart | Present |
| **Felt** | **Absent** |
| Foster | Present |
| Furlong | Present |
| Garlington | Present |
| Graybill | Present |
| Gysler | Present |
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Present |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| **Harrington** | **Absent** |
| Heliker | Present |
| Holland | Present |
| Jacobsen | Present |
| James | Present |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Present |
| Leuthold | Present |
| Loendorf | Present |
| Lorello | Present |
| Mahoney | Present |
| Mansfield | Present |

| | |
|---|---|
| Martin | Present |
| McCarvel | Present |
| McDonough | Present |
| McKeon | Absent |
| McNeil | Present |
| Melvin | Present |
| Monroe | Present |
| Murray | Present |
| Noble | Present |
| Nutting | Present |
| Payne | Present |
| Pemberton | Present |
| Rebal | Present |
| Reichert | Present |
| Robinson | Present |
| Roeder | Present |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Present |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Present |
| Swanberg | Present |
| Toole | Present |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Present |
| Ward | Absent |
| Warden | Present |
| Wilson | Present |
| Woodmansey | Present |

**CLERK HANSON:** Mr. President, 96 delegates present, 4 absent. [Editor's note: The official roll call on file with the Historical Society shows 99 present and 1 absent. There appears to be some confusion. See Page 1063, line 41 and Page 1071, line 42.]

**PRESIDENT GRAYBILL:** Very well. The roll will so show. Order of Business Number 1, Reports of Standing Committees.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** None. Order of Business Number 2, Reports of Select Committees.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** Order of Business Number 3, Communications. This morning, under communications, the Chair wishes to take the opportunity to address a few remarks to you. I think they've been passed out to you, but I will go over them. In the last few weeks, I have had to do battle on various occasions to accomplish the administrative needs of the Convention. And I speak today at the risk of having to do battle again. But I perceive it to be my duty to speak out if this Convention is in any danger of failing in its objectives. In my judgment, there is such a danger today. As delegates, we have two vital duties about which I wish to speak briefly this morning. We must assume these duties firmly, even boldly, or we will fail. First of all, we must draw up a Constitution which changes our system of government for the better. The need for governmental change is, I believe, evident. The present Constitution, 82 years old, hampers and confines us in a day much different from the late 19th Century frontier days when it was adopted. We need not change all of it, but surely it is evident that we need not reenact it either. The voters have authorized this Convention, and the taxpayers are funding it. They expect us to accomplish important changes. In my judgment, our efforts must be innovative. We must make the system work better. The new Constitution must be an advance. It must be simpler, shorter, and designed to work in the future. This much our presence here attests to. Not change for change's sake, but change for a new and better way to improve and safeguard Montana's future. But we are delegates, not representatives. In my judgment, we are sent here to use our abilities and to reason out a new document. It is our solemn duty to do as we think best—to use our heads, to study, to hold hearings, to debate, compromise, and to write a new Constitution. Yet, I constantly hear here in the chamber that the people back home won't accept this or that; that someone back home objects; that we have had to call the county clerk; or that the newspapers have discovered the truth from the people. The plain fact is that we should write the Constitution, and it should be the best one that we can arrive at together. The people expect leadership from this body. We are the ones they've sent here to study, to hear, to consider, to draft, to debate and to reason out the Constitution. When we've done our best and explained it to the voters, they will support us if we have done our work well. But we must assume our responsibility. We must write the Constitution based on our knowledge, our reasoning together and our work. It seems to me obvious that the people that we continually depend on and lean on in debate have not thought through all of these problems nor heard the witnesses nor seen the documents nor studied the blue books. And it seems to me a poor excuse for us to blame our votes on the people, after we have studied the situation. We must draw up a Constitution, then, which changes our system for the better. Now, second, we must make this Convention work. We must accomplish our purpose here, within our means. It is no answer to insist on the unlimited right to discuss issues. We have that right, but we do not have unlimited time or the money. Perhaps we should have, but the Legislature did not so provide. And I [illegible] they were not wrong. I think we can accomplish our purpose within their limitations, but we must work very hard to do it. In candor, we sometimes act like a group of politicians preparing for the election, not like leaders drawing a blueprint for Montana's future. We must tend strictly to the business at hand, the business of compromising on a better Constitution. Only when that is accomplished, when the new Constitution has been clearly and fully explained to the voters, should any of us become politicians again. To finish our job here successfully—to make the Convention work—we must depend upon our committee system. Each of you have been on a committee. Each of you has worked hard on that committee. No committee here has failed to work hard. We should support either the majority or the minority position. We should realize that the committee members have thought and struggled with the problems in their area, as we have in our areas. Let's follow them. We are not free, each of us, to write the Constitution as we, individually, might like. It would be impossible to have a Constitution which 100 of us, individually, liked. We must compromise. We must advance through the articles by choosing between the committee alternatives, not by inventing new amendments in the heat of the debate. There will, of course, be exceptions. We must hope that they'll be few, or we cannot, complete our task in a timely and reasonable fashion. In summary, we must draft the Constitution for Montana's future, not for the election. The people will support us when we have shown intelligent leadership. And, secondly, we must make the Convention work. We must proceed faster and surer, and we must share the responsibility and compromise gracefully. (Applause) Now, to help implement this, you'll find attached to these little remarks some guidelines for debate, which I'd like to go over with you. And these are my suggestions only. I want them taken in that spirit, but I think they might help. Now, the Convention has available only 23 days for debate in the 9-week session, which, as most of you are aware, is all that the appropriated funds will properly finance if we're to have any left to explain the Constitution to the people. We have used 8 days of debate and we have only 15 days of debate left. Yet, we must still debate eight articles and cover all the Style and Drafting reports thereon in these 15 remaining days. This will be difficult, but not impossible, if the delegates do this: One, debate only the major basic issues. Two, depend on the committees—follow the majority or minority, do not become amateur draftsman in areas you have not studied. Three, discipline your own debate—arise only with significant, additional comment—use your vote to record your opinion. The truth of the matter is that about 96 of us at all times discipline our debate beautifully; but the last four get us started again, and then we all go off the deep end. Four, compromise—understand that there are many ways to do most things. The Constitution must be better; it need not be perfect. Five, listen and decide. This, rather than drafting changes, is your duty, in my judgment, unless your committee is presenting its article. Six, avoid long speeches and statements for the record and the folks back home. Seven, speak only once unless you are presenting and explaining your article. Now, once again, these are not rules. In Committee of the Whole, you may speak as often as you want, and there's no limit yet. But if we can't live within these guidelines, then we are going to have to have rules, and by the time we get to them, they're going to have to be stringent. Now, on the last page of the four pages put out is a schedule. This schedule—there's no magic to it, any of you could have done it. But if you take the days between now and the 18th of March and divide them up, you'll find that no committee gets more than two days and that the Judiciary Article must be completed today and that the General Government remaining article must be completed in a day or we just can't get done. Now, it's all right there, and in addition to the things in the right-hand column under debate, we must consider 10 reports on style, plus 1 on ballot, which I didn't even put on here yet. So, I think you can appreciate the problem. Now, I'll add one more thought and that is that yesterday a good many of the members of the Judiciary Committee and some lawyers did work quite hard. And they are going to try and boil down and get themselves together and try and get the delegates to support either one or the other group of lawyers' viewpoints and try and get the Judicial Article accomplished today. Now, it can be accomplished today if we will follow one of the two or three main streams of argument that these lawyers have. But if we insist on each individually becoming lawyers today, it's going to be difficult to educate us all to that level, if I may rebut, in that short time. I thank you very much for your tolerance in letting me say these things. On the other hand, I think it's absolutely essential that we all understand these things and that we proceed on this basis.

4, Introduction and Reference of Delegate Proposals.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** 5, Final Con sideration.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** 6, Adoption of Proposed Constitution.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** 7, Motions and Resolutions.

**CLERK HANSON:** None, sir.

**PRESIDENT GRAYBILL:** 8, Unfinished Business.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** 9, Special Orders of the Day.

**CLERK HANSON:** None.

**PRESIDENT GRAYBILL:** 10, General Orders.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

**PRESIDENT GRAYBILL:** You've heard the motion that we resolve ourselves—

Mr. Harrington, do you want to be present? Very well, Mr. Harrington's present. Mr. Etchart, your presence can be noted. Mr. Felt and Mr. Nutting are not here.

Okay. The motion is to resolve ourselves into Committee of the Whole. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** So ordered.

(Committee of the Whole)

**CLERK HANSON:** "February 29, 1972. The following committee proposals are now on General Orders: Judicial, Natural Resources, Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting 1 and 2. That the Education Article Proposal Number 10, Local Government Proposal Number 11, General Government Proposal Number 12, Style and Drafting Proposal Number 2, having been duplicated and placed on the delegates' desks on the 24th day of February, 1972, at 9:00 a.m., are now in compliance with Rule 23 of the Montana Constitutional Convention rules." Mr. President [Chairman].

**CHAIRMAN GRAYBILL:** Very well. We're on the Judicial Article, and it's my understanding—so that everyone will know where we are—we adopted Section 1. Section 1 may be amended if anyone wants to, but it should be done at the end when we take up reconsiderations. We passed Section 2 until this time. We passed Section 3 and Section 4. It's my understanding, then, that we will start on Section 2 anew, and I believe, Mr. Schiltz, you have that.

Mr. Schiltz.

**DELEGATE SCHILTZ:** I think it's being distributed at the moment. We have developed one small addition that some of the lawyers interested have agreed upon, but have not agreed upon the language. With your permission, I would prefer that we go to 3 until we can resolve this problem of language. There's no problem with 3 or 4, so far as I know.

**CHAIRMAN GRAYBILL:** Very well. Mr. Berg, will you start on Section 3—would you like to reread?

Mr. Berg.

**DELEGATE BERG:** Mr. President [Chairman]. I move that when this committee has considered Section 3 of the minority proposal, with an amendment which I shall suggest, that it do pass the same. Addressing myself to the proposed amendment, may I say that in the weekend recess, as Mr. Schiltz suggested, we did have a conference of several lawyers—some on the majority, some on the minority—in an effort to resolve our differences, and we believe we have done that in a satisfactory manner. And it will be in that manner that it is presented to you today. With regard to Section 3, in line 24 on page 40, I move to delete the word "signed" and to substitute therefor the words "joined in".

**CHAIRMAN GRAYBILL:** Very well. Mr. Berg's amendment is to Section 3 of the minority report on page 40, in line 24, to strike the word "signed" and put in the words "joined in", so that the sentence reads—the last clause reads: "which must be in writing and joined in by the majority". Mr. Berg.

**DELEGATE BERG:** In this respect, I yield the floor to Mr. Schiltz to discuss this particular change.

**CHAIRMAN GRAYBILL:** All right. Mr. Berg.

**DELEGATE BERG:** The substance of this change was this—that this particular sentence was designed to prevent the court from issuing what are known as per curiam decisions, but there are many instances where the court, in expediency, does issue decisions that are not always signed by the justices, but they are always joined in by a majority of the justices before it is promulgated. And as a matter of simply permitting court expediency, we changed the language to the words "joined in" rather than "signed". Furthermore, we discovered that every justice, on every opinion, whether it is actually—indicates his signature on the publication, in the minutes of the court, they are signed and they do register, whether they are on majority or minority, whether they are dissenting or writing the majority. And this is the reason for this amendment.

**CHAIRMAN GRAYBILL:** Very well. Is there discussion of Section 3, as amended. Is there a discussion of Mr. Berg's amendment, "joined

**DELEGATE BLAYLOCK:** Mr. President [Chairman].

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Will Mr. Berg yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Yes.

**DELEGATE BLAYLOCK:** Mr. Berg, why would it make any difference—and I'm speaking as the layman—if all the justices signed it? Is that—why is that so hard?

**DELEGATE BERG:** It is not a difficult thing except that they say—and we talked with members of the Supreme Court about this—there are occasions when a justice is on vacation; he has approved of the opinion; he is perhaps away for 20, 30 days. If you require him to sign it at the time it comes out and is ready for publication, it's held up for at least a period of 20 to 30 days. These are the reasons that were given to us by the court members.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman, will Mr. Berg yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE ECK:** This is touching rather close to something I think we've been concerned with right through. Now, you did indicate that, somehow, they would be on record, either favoring or opposing the particular judgment and that—

**DELEGATE BERG:** We are assured from the judges that they sign the minutes of the court and that indicates their position, whether it's on a per curiam decision or not. They do sign that, and there is a public record available to determine how they voted and how they considered any measure. They also assure us that on these per curiam decisions, there's seldom a dissent.

**DELEGATE ECK:** Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Pemberton.

**DELEGATE PEMBERTON:** Mr. Berg, will you yield to a ques—Mr. President [Chairman], may I talk to Mr. Berg?

**CHAIRMAN GRAYBILL:** Mr. Berg, will you yield?

**DELEGATE BERG:** Yes.

**DELEGATE PEMBERTON:** Thank you. Mr. Berg, is this for just your change or is this—is the whole article—is all of Section 3 the same as it is in the book, or are we discussing just your change in the word right now?

**DELEGATE BERG:** I made a motion after I—in moving the passage of Section 3. I moved it, as amended, by striking the word "signed" and substituting the words "joined in". So, you are—I suppose—the Chair may correct me—actually considering the amendment at this time. Thereafter, I would understand you would consider the section as a whole.

**CHAIRMAN GRAYBILL:** That's right, Mrs. Pemberton, just the words "joined in".

**DELEGATE PEMBERTON:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, may I ask a question of Delegate Berg?

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** I yield.

**DELEGATE ROMNEY:** Mr. Berg, would you please describe how accessible this decision is to the public? Is it open and available, and how is it available?

**DELEGATE BERG:** Well, of course, all decisions of the Supreme Court are published. They are printed and published and, of course, as you know, put into a bound book. There are occasions when the court, instead of issuing a majority-minority opinion, especially on what they call the so-called "cell-block appeals"—if you've seen the list of the workload of the court, you'll find that there are so many appeals and then so many cell-block appeals. Many of those cell-block appeals are per curiam decisions. They are usually about a page long. They are almost always a unanimous decision, but they are sometimes issued without any particular justice actually signing it. However, as I understand it, on their journal, on their minutes, it is indicated which of the justices approved that particular opinion.

**DELEGATE ROMNEY:** Mr. Chairman, another question.

**CHAIRMAN GRAYBILL:** Yes, but it should be germane to the subject of the amendment.

**DELEGATE BERG:** Yes, I yield.

**DELEGATE ROMNEY:** I think it is.

**CHAIRMAN GRAYBILL:** Okay

**DELEGATE ROMNEY:** These opinions are available in the office of the clerk of the Supreme Court?

**DELEGATE BERG:** Oh, yes. I might tell you that when a court decision is handed down, it is first in a sort of a mimeographed copy, and almost always it's signed. There are, as I say, these rare exceptions—not so rare, but I would say infrequently used—per curiam decisions. Those opinions, as soon as they are handed down, are in the clerk's office, and the attorneys of record are immediately—they are immediately forwarded to them. They are then published, not only in what we call the *Montana Reports*, they are published in what we call the *State Reporter*. That's a mimeographed sheet that comes out within a matter of a week. You can subscribe to that. And they are finally printed in the *Pacific Reporter* all over the western states.

**CHAIRMAN GRAYBILL:** Very well. All in favor of the motion to amend line 24 of Section 3, page 40, by striking the word "signed" and putting in the words "joined in", please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** So ordered. Mr. Berg, Section 3. We're now open for other amendments on Section 3. Mr. Berg, would you move—

**DELEGATE BERG:** Mr. Chairman. I move that this committee, when it does arise and report, having had under consideration Section 3 on page 40 of the minority report, as amended, recommend it do pass.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Whatever happened to that amendment on Section 3 increasing the number of judges from 4 to 6?

**CHAIRMAN GRAYBILL:** All amendments are adopted after we passed it, and we're discussing it as is here.

**DELEGATE ROMNEY:** Very well.

**CHAIRMAN GRAYBILL:** Mr. Harlow.

**DELEGATE HARLOW:** We have discussed only the—have read only the first paragraph of Section 3. Have we divided that into subsections?

**CHAIRMAN GRAYBILL:** No, we have not.

**DELEGATE HARLOW:** The motion was to take all of Section 3.

**CHAIRMAN GRAYBILL:** That's right. I'll be glad to read it for you or have it read. Will the clerk please read Section 3 in its entirety, including the amendment?

**CLERK HANSON:** "Section 3, Supreme Court organization. The Supreme Court shall consist of one Chief Justice and four justices, a majority of whom will be necessary to pronounce the decision, which must be in writing and joined in by the majority. The Legislative Assembly may increase the number of justices from five to seven. District judges shall be substituted for the Chief Justice—or the justices in the event of disqualification or disability. In any cause, the opinion of the district judge sitting with the Supreme Court shall have the same effect as an opinion of a justice of the Supreme Court." Mr. Chairman, Section

**CHAIRMAN GRAYBILL:** Mr. Mahoney.

**DELEGATE MAHONEY:** I renew my motion to strike out lines 25 and 26 of this amendment, which takes it away from the Legislature.

**CHAIRMAN GRAYBILL:** Mr. Mahoney has made a motion that the sentence "The Legislative Assembly may increase the number of justices from five to seven" be stricken.

Mr. Melvin.

**DELEGATE MELVIN:** Mr. Chairman. In discussing this with the justices of the Supreme Court, they indicated that at the present time, no additional justices are needed. However, I resist this motion because it was indicated that in 1900, the original 1889 Constitution was changed to allow the Legislature to increase the Supreme Court to five from its original three. In 1919, the Legislature took action and increased it to five. And I think we can trust our Legislature to provide the same option when the increase is needed.

**CHAIRMAN GRAYBILL:** Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman. I also rise in opposition to the Mahoney amendment. And as an explanation of this, I discussed this section with some justices of the Supreme Court, and they agreed with Mr. Dahood that seven justices would greatly increase the capacity of the court to take care of their work. They informed me that this probably was a need that would arise in the future, and they explained how seven could increase their capacity as against five. The question I presented to them is one that, I'm sure, that runs through the mind of practically everyone. If seven justices have to listen to one argument, instead of five, how does that increase their capacity? They explained that with seven justices, they could operate in banks. They could parcel the writing of the opinions out, and thus increase their load. However, at the present time, their problem is not that pressing, and they feel the Legislature could be depended upon, at such time as it becomes so pressing, as to increase the number when that need became that evident. At the present time, they are operating with only three law clerks, instead of five, which has been authorized. And if they had their full five law clerks, which they would have had they—could they have hired them—the salary schedule that they are authorized to offer has caused them to lose some of their law clerks, some to this Convention and other places, so that they are constantly looking for law clerks. But this would assist them. They advised me that the plans for a new Supreme Court facility, if they ever come about, will provide for seven justices—a place for them—and they felt that before Montana would reach the point where we needed an intermediate appellate court as some states have, in the years to come, they could then increase their capacity by going to seven and operate at that time until the load became so great it was necessary to have an intermediate appellate system. I give this as an explanation for those who wonder why this about-face has been made. The recommendation of both the majority and minority was that the Legislative Assembly may increase the number of justices from five to seven, and as Mr. Melvin pointed out, that authorization remained before the Legislature from 1900 to 1919.

Before the Legislature increased it from three to five, the Supreme Court got so behind in their work that they had to operate on a commission basis for awhile.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman. I merely want to supplement the arguments presented by the previous delegates. I indicated that I would stand at 10:30 this morning and support a motion to have the court increased, by this Constitutional Convention, from five to seven. I am not going to stand in support of that motion this morning, but I do want to provide some statistics to support the position adverse to the motion before this body by Delegate Mahoney. The court presently is operating on a case basis on some 200 cases per year. In the last decade, the increase has been more than 50 percent. And as a consequence, the increase upon each judge with respect to deliberation and decision, has been an increase of more than 50 percent. Approximately three months out of the year are spent in the Supreme Court hearing-chamber for the purpose of listening to argument. Nine months are left, then, for deliberation, for study and for decision. As I indicated on Saturday, this appellate system in Montana is a system of right to each litigant who desires to appeal, and, consequently, the court does not have any power to restrict its case work. A most recent transcript that has been in the public spotlight is the Warwick case out of Bozeman. That transcript was over 1,100 pages. When we talk about 200 cases, we are talking about complex cases for the most part; some very extended with respect to transcript and testimony, some not so extended. But, in any event, 200 cases for a five-judge appellate court is a considerable amount of work. The court has indicated to me that, certainly within the next decade, in all probability, it will be necessary to increase the court from five to seven. I submit that although there may not be a pressing need at the moment, we are here to draft a Constitution, not for tomorrow, but for the decades. Both the majority and the minority, after study and after hearing witnesses, recommended that the Legislature have the power to increase the court from five to seven. I submit the motion to strike lines 25 and 26 should be rejected. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Mahoney's motion to strike from lines 25 and 26 on page 40, Section 3 of the minority report, the sentence: "The Legislative Assembly may increase the number of justices from five to seven."

Mr. Mahoney.

**DELEGATE MAHONEY:** May I close, Mr. Chairman?

**CHAIRMAN GRAYBILL:** Yes, sir.

**DELEGATE MAHONEY:** This is the same way—I sure feel—up here this morning—I feel like a story I one time heard, where he said he felt like a lion in a den of Daniels, and that's the way I feel amongst all these lawyers this morning defending the Supreme Court. We see in Mr.—I don't know, I believe it was in Mr. Dahood's statement—that they were talking, or it was either that or Mr. Habedank said—that they were now thinking about the new building and they were going to get seven fixed in the new building. So it's already underway. Now, I just think we'd better start and go back here and look at the boy that's paying taxes. And this is one of the costs now. If they have two vacancies in the attorneys over there now—and I think that they lost one just lately; in fact, I heard, I think, they lost him in the last week. So they have had them—the court is current. Now, if this thing should ever get serious enough, I am sure that we could amend the Constitution and could put in the seven if it's necessary. But I have watched the power of the Judiciary up here a good long time, and they have got more special privileges than any other person. They got the special retirement, which they said was not going to cost the taxpayers a cent; all they were doing was doubling the court fees. Now, if that isn't something, I don't know what it is. We saw last session of the Legislature, when the Governor—pressure was brought on him to even ask in a special session of the Legislature to raise the judges' salaries. Now, I just wonder how far—and I think if these judges are so overworked, we can, I'm sure—can find plenty that will take the job. We won't have any trouble, and I'm—think we can continue at five in place of the seven. And thank you for the time, Mr. President [Chairman].

**CHAIRMAN GRAYBILL:** So many as shall—

Mr. Romney, for what purpose do you rise?

**DELEGATE ROMNEY:** I ask for a roll call and ask for seconds.

(Seconds arise)

**CHAIRMAN GRAYBILL:** Very well, we'll have a roll call vote. So many as shall favor Mr. Mahoney's amendment, please vote Aye on the voting machines; so many as shall oppose it, vote No.

Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** The vote is closed. Will you take the roll please.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Absent |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Aye |
| Dahood | Nay |
| Davis | Absent |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Absent |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Absent |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Absent |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Aye |

| | |
|---|---|
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Absent |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 24 delegates voting Aye, 69 voting No.

**CHAIRMAN GRAYBILL:** Mrs. Babcock, your presence is here. Did you vote? You were not counted absent so you're all right.

**CLERK HANSON:** Mrs. Babcock voting No; 70 voting No, 24 voting Aye.

**CHAIRMAN GRAYBILL:** Very well. 70 delegates having voted No and 24 Aye, the motion fails.

Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman and ladies and gentlemen of the Convention. As it was indicated to you by Mr. Berg, there was a lot of work done over the weekend. I know I spent about five hours in the law library on Sunday. Yesterday afternoon, there was a meeting of Mr. Berg, Jack Schiltz, Jim Garlington very kindly offered to help. I was present and we met for about 4½-5 hours yesterday afternoon and hammered out these amendments which are now on your desks. These amendments constitute a compromise in language and in thought on the part of the majority and the minority reports that are in the book before you. We are indeed deeply grateful to Jim Garlington, who acted as somewhat of a referee and helped us tremendously. He volunteered for that important job. We have some differences, and I might mention those to you. And those differences are not in language, they're not in draftsmanship, they're not in technical matters; but they are in principles involved in this matter. One of the differences is whether the clerk of the Supreme Court should be elected or appointed. The basic difference is in the method of selection or election of the judges of the District Court and the Supreme Court. We, as the ad hoc committee that met yesterday afternoon, could not get together on those items. So the principles involved will have to be divided—will have to be decided—by the Convention. And we think we have drafts, or can supply drafts rather rapidly, to cover whatever this body may decide that they want involved. There is another difference, which is not perhaps so major, but it does involve the county attorneys—the difference between the majority and the minority report, whether they should be called district attorneys and elected as provided by law or we should provide in the Constitution for the method of electing the duties of county attorneys. We have not mentioned Justices of the Peace Courts in the Constitution, but we have provided, I think, adequately for a lower court of some type or form to be determined by the Legislature. In the first section, we have given broad power to the Legislature to provide for such lower courts as they may deem proper. Then, in some of the amendments—as we go through them, you will notice that we have provided, indirectly, for lower courts by providing that misdemeanors are to be tried in other courts, which shall be provided for by the Legislature. So, in two or three places, we have given a pretty strong mandate to the Legislature to provide some form of a lower court. Now, those are about, I think, a fair resume of the differences. There will be a difference also, perhaps, on the rulemaking power of the Supreme Court. And that, again, is in principal; it's not in mechanics of language or anything of that sort. So we should be able to get away from most of the wrangling that we started on Saturday afternoon. I would like to point out to you some general observations on the importance of the courts; and I would like to call to your attention that no matter what broad powers or rights you provide for people in the Bill of Rights, the value of those rights are dependent entirely on how the court interprets them. In other words, the average individual who feels that his rights are being impugned upon, whether it be by the Executive branch, and that includes the bureaus and administrative agencies; whether it be by an invalid act of the Legislature; whether it be by some overzealous law enforcement officer of some type or another; whether he's wrongfully imprisoned. Having those rights be meaningful is dependent entirely upon the courts. And if the courts are ineffective, if they're not independent, if they're subject to pressure by the other two branches of government, those rights might become meaningless. Therefore, I point out to you, that it is dreadfully important, in my view, at least, that the courts be made independent, be made strong, be made unafraid to act for fear of reprisal from one of the other branches of the government. And it is only in that manner that we can guarantee to our people the liberties that we wish them to have. The Constitution is, true enough, the framework of government, but on the other hand, it is a last bulwark and protection that the people have. The court should also be made strong enough and independent enough that they have no fear of striking down an unconstitutional legislative act. They should have no fear of saying to the Executive branch of government, "You've gone too far; you've impugned upon the rights of individuals." I understand there's a strong Natural Resources Article coming out. There's going to be some strong statements made as to ecology. Those statements are meaningless unless you have an independent Judiciary that's willing and able to enforce those rights guaranteed to you. I just wanted to make these observations. I'm sure that you are well aware of them, but it doesn't hurt to call them to the attention of the delegates. And I hope that we can keep the argument down to the basic principles involved. And I think I have fairly stated the differences that do exist, and differences will have to be decided by this Convention. Thank you.

**CHAIRMAN GRAYBILL:** Members of the committee, the Chair is aware that Mr. Aronow got up after we got started and in the middle of this, but we heard his remarks anyway because I think they were necessary. Now, members of the committee, you now have before you, on the motion of Mr. Berg, that when this committee does arise and report, after having under consideration Section 3 of the minority report, it recommend that the same be adopted. So many as—

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** A roll call vote, please.

**CHAIRMAN GRAYBILL:** Very well. So many as are in favor of that, vote Aye on the voting machines; so many as opposed, vote No. Section 3 in its entirety, as amended. So many as are in favor, vote Aye; so many as are opposed, vote No.

Has every delegate voted? (No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote? (No response)

**CHAIRMAN GRAYBILL:** Very well. Take the vote.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Absent |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Absent |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Absent |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |

| | |
|---|---|
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Absent |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Absent |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |

**CHAIRMAN GRAYBILL:** Mr. Nutting, your presence is noted.

**CLERK HANSON:** Mr. President, 90 delegates voting Aye, 5 voting No.

**CHAIRMAN GRAYBILL:** 90 having voted Aye and 5 having voted No, Section 3 is adopted. Will the clerk please read Section 2 in its entirety, as it originally appeared in the minority report on page 40.

**CLERK HANSON:** "Section 2, Supreme Court powers. The Supreme Court shall have final appellate jurisdiction and general supervisory and administrative control over all courts. The Supreme Court may make rules for the practice of law and judicial administration in all courts. The Supreme Court shall have such power to make rules of procedure as may be provided by law. The Supreme Court shall have original jurisdiction to issue, hear and determine all writs appropriate to the exercise of its jurisdiction, including the writ of habeas corpus." Mr. Chairman, Section 2.

**CHAIRMAN GRAYBILL:** Very well. Mr. Schiltz, do you have an amendment?

**DELEGATE SCHILTZ:** Yes, will you have the clerk read it, please.

**CHAIRMAN GRAYBILL:** Mr. Clerk, will you read Mr. Schiltz's amendment?

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 2, page 40, lines 10 through 20, of the Judicial Committee proposal by striking the entire section and inserting in lieu thereof the following language: 'Section 2, Supreme Court powers. The Supreme Court shall have appellate jurisdiction, including jurisdiction to issue, hear and determine writs appropriate to its appellate jurisdiction, and original jurisdiction to issue, hear and determine writs of habeas corpus. It has general supervisory control over all of the courts. It may make rules governing appellate procedure, rules of practice and procedure for all the other courts, and rules of admission to the bar and conduct of its members'." Mr. Chairman, amendment by Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz

**DELEGATE SCHILTZ:** I apologize. I have some additional material on there. And it isn't very long, but it was just resolved on the floor here. If everybody would take the copy of my amendment he has and put the following language after the word "members": "Rules of procedure shall be subject to approval or disapproval" —so far you should have "Rules of procedure shall be subject to approval or disapproval by the Legislature in either of the two sessions following their promulgation."

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** In connection with the amendment of Section 2, I should like to say that this is a consensus restatement of the minority section 2, which in turn is completely redrafted Section 2 and 3 of the old Constitution. Mindful of the Chairman's admonition this morning, we have produced something new reducing about a page and a half of printed language down to this paragraph. It takes care of the objections and difficulties we were having on Saturday. The clerk did misread the word in the first line "the Supreme Court shall have"; it reads "has". I don't think there should be any difficulty with this, except possibly a comment on the new material which I have just dictated. There's some fear among lawyers that the Supreme Court will take its authority to make rules governing procedure as authority to make substantive rules of evidence. Mr. Berg has agreed to this amendment, and I'm sure most of the other lawyers would agree with it, if not all of them. I move the adoption of the amendment.

**CHAIRMAN GRAYBILL:** Very well. Is there discussion?

Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. Chairman. Again, speaking as a layman, when each one of these amendments is made, I want to know precisely why the amendment is made. For instance, why is this language necessary, rather than what's in the present minority report? What does it do that the language in the minority report right now does not do?

**CHAIRMAN GRAYBILL:** Mr. Schiltz, do you care to speak to that?

**DELEGATE SCHILTZ:** Yes. I didn't make underlines. "The Supreme Court has appellate jurisdiction, including jurisdiction to issue, hear and determine writs appropriate to its appellate jurisdiction"—that's substantially the same as is in the present record—"and original jurisdiction to issue, hear and determine writs of habeas corpus", which is also in the minority report. "It has general supervisory control"—which is in the minority report. "It may make rules governing appellate procedure,"—we may have changed that; that's additional, although I think we will, as a result, delete some other material that may be in the minority report—"rules of practice and procedure for all other courts,"—instead of the material in the minority report, which, I think, gave the court—wait till I find it—

**CHAIRMAN GRAYBILL:** Line 12, administrative control.

**DELEGATE SCHILTZ:** Yeah, which gave the court administrative control; it spelled out what we consider administrative control to be and limited it to that amount—and, of course, "rules of admission to the bar and conduct of its members"—I don't know if that's in there or not. No, that's additional. Does that answer you, Mr. Blaylock?

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Then, Jack—then also, you add this down there "the rules of procedure". That's new—what you put on just after you got through.

**DELEGATE SCHILTZ:** That's brand-new, but it's—let me explain that. In my own mind, if the rules of procedure were in there just as it is written without the additional material, I would consider that the Supreme Court had only authority to say how the procedures in the various courts should be handled. But, as I said in the explanation, the Supreme Court has shown an inclination, under rules of procedure, to get into the area of substantive rules of evidence. And lawyers are extremely jealous on that subject. So, that, in turn, was a delegation from the Legislature, and we want to keep it in the Legislature's hands by adding this additional material.

**CHAIRMAN GRAYBILL:** Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, could I ask Mr. Schiltz a question, please?

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE BOWMAN:** Mr. Schiltz, it says "to—hear and determine writs of habeas corpus" in your amendment, and in the minority report, it says that they'll have the power to hear and determine all writs appropriate to the exercise of its jurisdiction. By cutting out those words, are you severely limiting the right of the court to hear all writs?

**DELEGATE SCHILTZ:** Really, that was kind of a Style and Drafting change, Mrs. Bowman. In the amendment, it has authority to hear and issue all writs appropriate to its appellate jurisdiction, and then we carefully guarded the right to original jurisdiction for habeas corpus.

**CHAIRMAN GRAYBILL:** Mr. Brazier.

**DELEGATE BRAZIER:** Would the delegate, Mr. Schiltz, yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Schiltz?

**DELEGATE SCHILTZ:** Yes.

**DELEGATE BRAZIER:** I am concerned that the record reflect just what the intention of this proposed amendment is, with respect to the scope of general supervisory control. Therefore, would you please tell me whether it is the intention of the drafters of this proposed amendment that the scope of that general supervisory control be limited to a certain remedial writ, where if it goes beyond that; and if it does go beyond that, would you please tell us for the record what is intended by the phrase.

**DELEGATE SCHILTZ:** Mr. Brazier. This was a compromise on my own part. I was defeated on my motion Saturday to try to take the writ of supervisory control away, and I conceded that I was defeated, and so I put it in. I can see that the Supreme Court can and will continue to use the writ of supervisory control under this wording.

**CHAIRMAN GRAYBILL:** Mr. Brazier.

**DELEGATE BRAZIER:** Would Mr. Schiltz yield to a second question?

**CHAIRMAN GRAYBILL:** Mr. Schiltz?

**DELEGATE SCHILTZ:** I yield.

**DELEGATE BRAZIER:** Mr. Schiltz, I merely want to pin down whether it's the thought of the draftsmen of the proposed amendment that the language goes beyond the use of a writ and into other administrative matters.

**DELEGATE SCHILTZ:** You will notice that some of Mr. Berg's language having to do with administrative control has been deleted. In other words, we did not want to put into the Constitution that the Supreme Court could set up a bureau of administration. Mr. Berg agreed to that. I would expect that the Supreme Court, under general supervisory, could order a judge to go to another place, could call in a judge to sit on the Supreme Court in the absence or vacancy of a Supreme Court member, that sort of thing.

**CHAIRMAN GRAYBILL:** Mr. Holland—Mr. Berg.

**DELEGATE BERG:** I don't want to take very much time on this. My construction of general supervisory control is broader than the mere issuance of the writ of supervisory control. I anticipate that perhaps, in time, the words "general supervisory control" may include administrative control of the judicial system. I don't want to be misunderstood on that. The question as to whether administrative control—whether the word "and administrative control" added to that or detracted from it—within the group that we were working with, we deleted the word "administrative control". I, in my own mind, think that general supervisory control is just as broad, and I would not want the delegate to misinterpret, at least, my understanding of that feature.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. Mr. Berg is absolutely right. That was the sense of the ad hoc committee in taking out "and administrative".

**CHAIRMAN GRAYBILL:** Members of the committee, you now have before you, on the motion of Mr. Schiltz that when this committee does arise and report after having had under consideration Section 2, including the whole of the section as amended by him, that the same be recommended for adoption. So many as are in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** Very well. It's adopted as amended. Will the clerk read Section 4.

**CLERK HANSON:** "Section 4, District court powers. Original jurisdiction of all matters and causes, both civil and criminal, including the power to issue, hear, and determine original and remedial writs, is vested in the District Courts, but the distribution of concurrent jurisdiction with other courts may be provided by law. Until otherwise provided by law, appeals from inferior courts must be tried anew and in the District Court. District Courts shall also have jurisdiction to review decisions of administrative boards and commissions, and they shall have such judicial jurisdiction as may be delegated by the laws of the United States and the State of Montana. The Supreme Court and the District Court process shall extend to all parts of the state." Mr. Chairman, Section 4.

**CHAIRMAN GRAYBILL:** The Chair would like to call to the attention of the delegates that we're considering Section 4 as it was originally, on page 41 of the minority proposal. Since proposal 2 and since we had not finally adopted it, the motions and amendments we made the other day are wiped out, and we're considering it as it was originally.

Mr. Schiltz.

**DELEGATE SCHILTZ:** May I have my amendment read?

**CHAIRMAN GRAYBILL:** Very well.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 4, page 41, lines 2 through 15, of the Judicial Committee proposal by striking the entire section and inserting in lieu thereof the following paragraph: 'Section 4, District Court jurisdiction, subparagraph 1. The District Court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States. Subparagraph 2. The District Court shall hear appeals from inferior courts as trials anew. Subparagraph 3. The Legislature may provide for direct review by the District Court of decisions of administrative agencies, for jurisdiction of criminal cases not amounting to felony in other courts, and for concurrent jurisdiction with other courts.'" Mr. Chairman, the Schiltz amendment to Section 4.

**CHAIRMAN GRAYBILL:** Very well. Mr. Schiltz's amendment to Section 4 is allowed and opened for discussion.

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration the amendment to Section 4 of Judicial Article, it recommend the same do pass.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** This again is a [illegible] statement of Section 4, by the ad hoc committee to which Mr. Aronow referred. In response to the inquiry that Mr. Blaylock wanted, I'll try to pick out the differences between this and the minority report. We added that the District Court shall have jurisdiction in criminal cases amounting to a felony. The minority report did not do that. And we added the words "at law and in equity for all civil matters". The idea there was that possibly we would lose our jurisdiction for divorce cases in the District Court, which are equitable matters. It was added in an abundance of caution. We added naturalization. I didn't personally think it was necessary, but, again in an abundance of caution, we said that the District Court shall have naturalization powers and such other jurisdiction, similar to naturalization, that the United States might give to our District Court. We provided that the District Court should have the absolute duty to hear appeals from inferior courts and that those would be tried anew. And then, finally, we provided that the Legislature may provide for direct review by the District Court of decisions of administrative agencies. And we added the material for criminal cases not amounting to a felony and concurrent jurisdiction with other courts, in case at some time in the future there may be created other courts with which the District Court could have concurrent jurisdiction. Otherwise, it's substantially the same section—a little bit briefer, stated a little bit differently.

**CHAIRMAN GRAYBILL:** Mr. Leuthold.

**DELEGATE LEUTHOLD:** Would Delegate Schiltz yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I yield.

**DELEGATE LEUTHOLD:** In this section (Inaudible).

**CHAIRMAN GRAYBILL:** Mr. Leuthold, you'll have to speak a little louder. I can't hear you.

**DELEGATE LEUTHOLD:** Mr. Schiltz, is this the only reference that'll be made in the Judiciary section in regard to Justice Courts and Small Claims Courts?

**DELEGATE SCHILTZ:** I don't know that—Well, there's a reference by inference here, I might say, but the matter of Justice Courts and Small Claims Courts was taken out in Section 1, when it set up what the judicial power of the State of Montana is. If you'll look at Section 1, it says that the judicial power is vested in a Supreme Court and District Courts and such other courts as the Legislature may provide. That's where your

Justice Court power will have to come from, if we have it.

**DELEGATE LEUTHOLD:** Mr. President, one more question. I'm wondering why it can't be spelled out a little clearer so that we can—assure us that we'll have Justice Courts and Small Claims Courts.

**DELEGATE SCHILTZ:** I think, as a practical matter, the Legislature will do that, but I can't assure you that it's going to. I happen to be a justice-court man, and I think that we ought to have it. Now, in the present Constitution, we have a separate section in the Constitution saying what the Justice Court's jurisdiction is. And in the article—or in the section comparable to Section 1, we also have Justice Courts included there.

**DELEGATE LEUTHOLD:** Thank you.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman. In the amendment proposed by Mr. Schiltz, I'm going to move to amend it in subsection 2 thereof, by changing the period after the word "anew" to a comma and adding the words "unless otherwise provided by law."

**CHAIRMAN GRAYBILL:** That's in subsection 2?

**DELEGATE LOENDORF:** Yes, Mr. Chairman. I had provided a written amendment to the original subsection 4. I didn't know these amendments were coming, so I'll have to change it to read as I've read it to you now.

**CHAIRMAN GRAYBILL:** Very well. Mr. Loendorf proposes an amendment to Mr. Schiltz's amendment, in subsection 2 thereof, so that it would read: "The District Court shall hear appeals from inferior courts as trials anew comma, unless otherwise provided by law." He wants to add the phrase "unless otherwise provided by law" to subsection 2. Is that correct, Mr. Loendorf?

**DELEGATE LOENDORF:** That's correct, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE LOENDORF:** May I speak to the amendment?

**CHAIRMAN GRAYBILL:** You may speak to it.

**DELEGATE LOENDORF:** There's no doubt in my mind that, by Section 1, the Legislature can provide for whatever courts—Small Claims Court, Justice Courts, whatever we might wish to call them—as they may find necessary to provide in the future. However, I'm worried that subsection 2 of the proposed Section 4 here would seriously hamper, say, a Small Claims Court, if we require that all appeals from the lower courts be tried anew. And—I might best explain that by an example. Suppose Delegate Leuthold has a claim for me for $75, and we have a Small Claims Court set up in Montana. He goes to this Small Claims Court and, assuming it's one like they have in other states where they help him prepare the complaint so he doesn't have to hire a lawyer—it's a $75 claim—he has it processed, and he wins the case there. Now, if I simply say, "I appeal", then the whole thing has to be tried anew in District Court. That means Mr. Leuthold, after winning the case in this Small Claims Court, has to go hire a lawyer, who has to prepare the complaint, summons, have them issued. Even if I default and do not appear, he has to get an application for entry of default, an affidavit of amount due, an entry of default, a judgment and execution. And no lawyer is going to do that for $75. So, by providing this type of appeal, it seems to me the effectiveness of a Small Claims Court may be defeated. I recognize that trial de novo is needed in certain instances, and I think if we adopt this amendment, we have the flexibility where the Legislature can provide for the type of appeal which will provide for the most effective types of inferior courts. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Loendorf's amendment to add the words "unless otherwise provided by law".

Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman. I rise in opposition, because this sword cuts both ways. Number one, I don't like to disagree with Mr. Loendorf, but when you take an appeal from the Justice Court to the District Court, you take it upon the files and the complaint that's already in the Justice Court. There's no need to draft a new complaint in the District Court. The other thing is that in all of the counties of the state, you aren't going to be able to have a lawyer, justice of the peace or magistrate or whatever you may call him. In a lot of the rural counties where collection agencies are extremely active, people live 'way out in the country or some distance from the county seat.

They may not be able to get in or may forget or not get in in time, so there has to be some safeguard. And most of these minor claim courts are not [illegible] where you have a court reporter where you have a transcript, and I submit to you that having a transcript typed up by a court reporter would be extremely expensive, and it would be expensive to the taxpayers to provide a court reporter. So the only practical way is to provide for a trial anew upon appeal.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman. I rise in support of the proposed amendment. I want to speak not only on the proposed amendment, but its effect upon the entire article, or the entire section. In that regard, I want to first call your attention to the last sentence in subparagraph 3, which provides for concurrent jurisdiction with other courts. This language is inserted in this section for the sole purpose of giving great flexibility to the entire inferior court system. Pursuant to this language, the Legislature will be able not only to enlarge, if they desire, the jurisdiction of the Justice of the Peace Courts. It may also, if it desires, create Small Claims Courts. It may also, if it finds it necessary in the future, provide for domestic relations courts. It may provide, if necessary, for separate probate courts. It gives great flexibility to the entire inferior court system. Now, there is prevalent throughout the United States what is known as the two-tier system. This is a more modern approach to a judicial system. The two-tier system would say that there are basically two courts, the Supreme Court and the District Court level. And the District Court level would, as for an example in the Montana Plan, appoint magistrates. Those magistrates would be exercising exclusively original jurisdiction of the Supreme Court. And, like Mr. Aronow suggests, were that ever to occur, then the appeal is from the District Court to the Supreme Court, and transcripts and rather expensive appeals are required. It is my judgment and, I think, the judgment of most of the committee that that kind of procedure Montana is not yet ready for, perhaps never will come to recognize. But it ought not to be entirely excluded from possible consideration in the future. I believe that Mr. Loendorf's amendment accomplishes this—I believe it also accomplishes and facilitates possible future renovation. Now, insofar as Small Claims Courts are concerned—generally speaking, a Small Claims Court is one of very limited jurisdiction, oftentimes not in excess of $100. Those types of claims, which are always civil in nature, are not really of the character that justify appeal from a decision of the Small Claims Court. The Small Claims Court really has a place already in Montana. If the Legislature thought it necessary to provide for appeal by trial anew in the District Court from a Small Claims Court decision, it can do so, but it is not absolutely obliged to do it under Mr. Loendorf's amendment. It seems to me Mr. Loendorf's amendment increases the flexibility of this jurisdictional problem. I therefore support it.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman. I'd like to speak in support of Mr. Loendorf's amendment. I have a copy of a speech here by William Burnett, who is presiding judge of the Denver County Court. And in it, when he discusses the de novo trial, he says: "Take, for instance, the matter of appeals. As lower court proceedings are traditionally not of record, appeals must involve a trial de novo in a higher court. Thus, the person involved in a minor case becomes entitled to two complete trials at public expense. The convicted felon or loser of the million-dollar lawsuit has no such right. This new trial appeal, which may be had irrespective of error at the original trial, is not only costly but breeds contempt and disrespect for the lower court. It favors the rich over the poor, the affluent over the ignorant, the dishonest over the honest. An interesting object lesson may be drawn from our Colorado experience. When de novo was eliminated by making the lower courts of record, appeals from our court were cut in half. Thus, the one trial, one appeal rule is not only good justice, it is also good economy." Therefore I support Mr. Loendorf.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman. I rise in opposition to the amendment and in favor of the committee's report as drafted. My reason for opposing the amendment is that this would open the door to permit the Legislature to adopt one of the very real evils of the Montana Plan. And that is: appointive magistrates, from which the only appeal is to the Supreme Court of the State of Montana. If Mr. Leuthold lost his $75 claim in the Magistrate Court as adopted by the Montana Plan—if that were to be adopted by the Legislature—his only appeal would be to the Supreme Court of the State of Montana, and I submit that

that would be grossly more expensive than to the District Court. Adding this magic language "unless otherwise provided by law" could permit the Legislature to circumvent our District Courts as appellate courts from our people's court level. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** As I said in this connection on Saturday, I oppose the amendment, but I want everybody to know what he's doing. If you follow this amendment—and I'm speaking specifically with reference to criminal appeals—you will run the risk of losing your protection from an aggressive JP or an aggressive Police Court and you won't have an automatic right of appeal no matter how wronged you feel.

**CHAIRMAN GRAYBILL:** Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman. I think it should be pointed out, without saying one way or another whether it's good or bad, that this would open up the possibility that there would be no appeal, and these smaller—or lower courts could be courts that would be finally hearing a case for the first time and that would be the only time you'd be in court. I think that it opens that up.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** I rise to speak against the amendment. You've got to realize that there's been no provision that the lower courts would be courts of record. If the Legislature passes a law that these shall not be trials de novo, this means that you must appeal on the record. And of all the testimony we heard, that was consistent, the evils in the present lower court system is that the law enforcement officers will consistently bring the case to one out of several JPs—the one that always give them the conviction—and they tell them all about the case in advance and get the decision in advance, before the poor man ever gets into court. Very often, they go in without a lawyer, think that the most they can get is a fine, wind up with a jail sentence. And this is when the trial de novo—you then go before the jury and have the jury consider it. I might give as an outstanding example what could happen—was an instance up in Great Falls around 10 years ago, where a police judge was appointed. He was a hard law enforcement man. One of his first actions when he got on there was to take a mother of two children well under school age and for a minor traffic offense give her 10 days in the city jail. Now, if there had been no trial de novo, there would have been no appeal from that decision. That woman would have served the 10 days. Ever since the history of Justice Courts and Police Courts in the State of Montana, there have been unreasonable decisions by judges in lower courts, and the protection has been, at that time, that the person goes out after they've been aggrieved—go out and hire an attorney and then go up and have a proper trial of the matter and let there be a decision. I submit that where we have no adequate means of having a record made in the lower court—must be at least by a tape recorder, it would be up to that person who is being tried to make sure a record is being made, that this could lead to multiple evils, and the amendment should be rejected.

**CHAIRMAN GRAYBILL:** Mr. Harlow.

**DELEGATE HARLOW:** Mr. Chairman. I rise in support of the amendment. I realize the lawyers are all jumping up here, very much disturbed by allowing the Legislature to have anything to do with their own little courts. But without the amendment, this thing is contradictory and does not allow the people any flexibility in the future in regards to forming the kind of courts that they want. You're freezing in the inferiorness of the inferior courts when you do not allow the Legislature to improve them by law. I heartily support the amendment, and I feel all of us should if we are concerned with court improvement.

**CHAIRMAN GRAYBILL:** Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, fellow delegates. I can recognize the need for flexibility in the future, but I was in opposition to this the other day, and I would be in opposition to Mr. Loendorf's amendment, because I think by putting that language in there, you can possibly remove one of the few limitations, one of the few protections, that the consumer has. Let's take the case that Mr. Loendorf was talking about. He owed Mr. Leuthold $75. Well, Mr. Leuthold had sold him a vacuum cleaner that didn't work, and he took it back to Mr. Leuthold and Mr. Leuthold said, "Too bad. I got your money, and I'm not going to fix it." So Mr. Loendorf said, "Well, I'm not going to pay you." And Mr. Leuthold said, "Well, I'm going to take you to Small Claims Court." And he does, and under the law, under the contract, he would probably get a judgment. The only recourse that Mr. Loendorf would have, if the Legislature so provided, would be to appeal to the Montana Supreme Court. And I've done a lot of work in the Justice Courts—I've probably done as much work in Justice Courts as anybody here—and I've seen poor people dinged on these things—not just poor people; rich people, too—dinged with furnaces that don't work; dinged with carpet that they don't want; dinged with siding that isn't siding. And one of the few protections you have is to refuse to pay. And if they can go into Justice Court and get a judgment against you and then you have to pay 2 or $3,000 to appeal to the Montana Supreme Court, you're just stuck with it. And I think you are opening the door to removing one of the few protections that the consumer has, in addition to the other things that have been outlined. And I would ask you to resist this amendment. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Will Mr. Schiltz yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I yield.

**DELEGATE BLAYLOCK:** Mr. Schiltz. Now, under this phrase that Mr. Loendorf wants to add, it doesn't necessarily mean, does it, that if the Legislature took this that they would fix it so you had to go to the Supreme Court? They could also fix it so you could go to the District Court, couldn't they, from those inferior courts?

**DELEGATE SCHILTZ:** Certainly, if we want to trust the Legislature to act, but it also would allow the Legislature to deny such an appeal, which is my worry.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. Loendorf's amendment to Mr. Schiltz's amendment—subsection 2 of Section 4. [illegible] Mr. Loendorf would add—

**DELEGATE LOENDORF:** May I close?

**CHAIRMAN GRAYBILL:** If you need to.

**DELEGATE LOENDORF:** I'm not sure that I need to, but I would like to say this. If we assume that our inferior courts now are always going to remain as they are and never be improved, I would be against my own motion. However, in appeals from the District Court now—which no one doubts their ability to try a case—we simply appeal to the Supreme Court. Procedures can be provided in the future by which you could have appeals other than trial de novo from a Small Claims Court or any other inferior court to a District Court. This is not a limiting factor. It's something that allows for flexibility, and it does allow for trust in the Legislature. We've trusted them, I think, in many areas and should trust them in this area.

**CHAIRMAN GRAYBILL:** Mr. Loendorf's amendment would add the words "unless otherwise provided by law" to subsection 2 of Section 4 so that it reads: "The District Court shall hear appeals from inferior courts as trials anew unless otherwise provided by law." So many as shall be in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. Please indicate in the voting machines. So many as are in favor, vote Aye; and opposed, vote No.

All the delegates voted? Any delegate wish to change his vote? 62 delegates having voted Aye, 32 having voted No, it's adopted. Very well.

Mr. Davis.

**DELEGATE DAVIS:** Mr. President [Chairman]. I would move to amend Section 1 of Mr. Schiltz's amendment by adding at the end of the paragraph—striking the period and putting in "or the State of Montana".

**CHAIRMAN GRAYBILL:** After the word "United States"?

**DELEGATE DAVIS:** Yes. Strike the period and put in "or the State of Montana".

**CHAIRMAN GRAYBILL:** Very well. Mr. Davis proposes to amend Section 1 of Mr. Schiltz's amendment by adding the words "or the State of Montana", so that the last sentence reads: "It shall have the power to naturalize and such additional jurisdiction as may be delegated by the laws of the United States or the State of Montana."

Mr. Davis.

**DELEGATE DAVIS:** Mr. President. The minority proposal includes that they shall have such additional jurisdiction as may be delegated by the laws of the United States and the State of Montana. And in speaking to that the other day, Mr. Berg shows in the comments on page 51 or page 52—stated on—I'll go a step further—page 53—"We have also accommodated future delegation of judicial power by the United States government or the State of Montana." In going back to the cowboy rule, they cite the Powder River rule on page 51—said: "We are apprehensive as to how limited that jurisdiction may prove." Now, the original majority proposal also includes in it, and our present Constitution, for all such special actions and proceedings as are not otherwise provided for. It seems to me this is very proper to have such further jurisdiction as a state will want to vest in the District Courts in the years to come and not to take any chance that it's limited. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Felt, the journal may show your presence now, so you can vote.

Very well. The issue is on Mr. Davis' amendment to add the words "or the State of Montana" to subsection 1 of Mr. Schiltz's amendment so that it reads that the courts shall have the power of naturalization and such other additional jurisdiction as may be designated by the laws of the United States or the State of Montana. So many as are in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's adopted.
Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman. Will Mr. Berg yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** I yield.

**DELEGATE MURRAY:** Mr. Berg. Section 1 of the Schiltz amendment provides the District Court has original jurisdiction in all criminal cases amounting to felony. We seem to be removing any reference to the Justice Courts from the Constitution. Does this language mean that inferior courts would not have the examining powers that they now have?

**DELEGATE BERG:** No. We believe that the Legislature, as it does today, provides for examining power in the Justice Courts. And you will note that we have given them concurrent jurisdiction with the District Courts. So that power would exist simply by legislation.

**DELEGATE MURRAY:** Where is the concurrent jurisdiction reference?

**DELEGATE BERG:** The last sentence in paragraph 1—"and for concurrent jurisdiction with other courts."

**CHAIRMAN GRAYBILL:** Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman, may I inquire further, please?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE MURRAY:** Mr. Berg, the language of the last sentence disturbs me, because it says "for jurisdiction of criminal cases not amounting to felony in other courts and for concurrent jurisdiction with other courts." Is the intent of the amendment, then, that inferior courts of whatever type might be set up by the Legislature would have the power to examine—is that right?

**DELEGATE BERG:** That is our intention, and we so discussed it.

**DELEGATE MURRAY:** Right. I raised that because I see in the existing Constitution reference to the Justice Courts having that power. And since it would be eliminated, I am sure that our records should contain your intent. Thank you.

**DELEGATE BERG:** The intent of not only the minority but the ad hoc committee—that that arraignment power would still be left with the JP court by statute.

**DELEGATE MURRAY:** I'm delighted so, because I think it would be chaos without it. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Will Mr. Berg yield to a question, please?

**DELEGATE BERG:** I yield.

**DELEGATE DAVIS:** Mr. Berg, I was very favorably impressed by your use of the word "all causes" in your minority Saturday. And now, the word "cases" appears instead. Is it your opinion that this means the same thing, or was there a reason for this change?

**DELEGATE BERG:** Well, the word "all cases" was used, as I recall, in the California Constitution with reference to what they call the superior courts". When I wrote the minority, I preferred the word "causes" because, to me, it has a little more legalistic background. But we added to that, as you will note "and matters", so that we [illegible] kind of litigation.

**CHAIRMAN GRAYBILL:** Very well. Members of the Committee, you have before you, on the motion of Mr. Schiltz that when this committee does arise and report, after having had under consideration Section 4, as amended, that it recommend the same be adopted. All in favor, please say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** And it's so adopted. Will the clerk please read Section 5 as it appeared in the original minority report.

**CLERK HANSON:** "Section 5, Judicial districts. The Legislative Assembly shall divide the state into judicial districts and provide for the number of judges in each district. The Legislative Assembly shall have the power to change the number of judicial districts and their boundaries and the number of judges and magistrates in each district. However, each district shall be formed of compact territory and be bounded by county lines, but no changes in the number or boundaries of the districts shall work a removal of any judge from office during the term for which he has been elected or appointed. The Chief Justice may assign the district judge and any other judges for temporary service from one district to another and from one county to another." Mr. Chairman, Section [illegible]

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman. I propose an amendment to Section 5. These are simple, almost stylish form amendments, but I should like to—and I think they can be handled quite readily [illegible] strike the words "or boundary" and substitute the following: [illegible] the word "or" and then in the middle of the sentence between the word[s] "districts" and "shall", substitute the words "or judges therein" and at the end of line 23, after the word "changes", include by substitution the words "in the boundaries". So that the sentence will read: "The Legislative Assembly shall have the power to change the number of judicial districts and their boundaries and the number of judges and magistrates in such districts. However, each district shall be formed of compact territory and be bounded by county lines, but no changes in the boundaries or in the number of districts or judges therein shall work a removal of any judge from office during the term for which he has been elected or appointed."

**CHAIRMAN GRAYBILL:** So many as shall be in favor of that style amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Okay, it's adopted.

**DELEGATE BERG:** Mr. Chairman. I move that when this committee does arise and report, after having under consideration Section 5 of the minority report as it appears and amended on page 41, adopt the same.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** The language contained in this section is essentially the same as it was in what I should call the 1889 Constitution. It has had some minor amendment—some minor change in language, but essentially says the same thing. It leaves to the Legislature exclusively the power to change judicial districts and to add judges within districts, but it specifically prohibits the Legislature from making such a change as would eliminate a judge during his term of office. Mr. Chairman, I did overlook one other amendment that was done in our ad hoc committee.

**CHAIRMAN GRAYBILL:** All right. Go ahead and make it.

**DELEGATE BERG:** Again on page 27 and with reference to the third sentence—

**CHAIRMAN GRAYBILL:** Page what?

**DELEGATE BERG:** Page 41, line 27—

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE BERG:** After the word "may", insert "upon request"—so that the sentence reads: "The Chief Justice may, upon request, assign the district judge and other judges for temporary service from one district to another and from one county to another."

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Just a moment—so many as shall be in favor of allowing the committee to make that change, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** Very well. It's adopted.

**DELEGATE BERG:** I should only comment upon that change that it was felt that the Chief Justice ought not to be able to assign district judges, in effect, willy-nilly around the state; that it could be open to possible abuse; that the real need arises when there is heavy congestion in one District Court; and, therefore, upon the request of that district judge, the Supreme Court Chief Justice may assign any other judge in there to assist him in the cleanup of his work. That is the reason for this ad hoc amendment.

**CHAIRMAN GRAYBILL:** Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President.

**CHAIRMAN GRAYBILL:** You wish to make your amendment, and if so, do you want the clerk to read it?

**DELEGATE SWANBERG:** Yes, if you please.

**CHAIRMAN GRAYBILL:** Mr. Clerk, will you read Mr. Swanberg's amendment.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 5 in the minority report of the Judicial Article by deleting same and substituting the following language: 'Section 5, Judicial districts. The state shall be divided into judicial districts, [in] each of which there shall be elected by the electors thereof one or more judges of the District Court, as provided by law, whose term of office shall be 4 years. The Legislative Assembly may increase or decrease the number of judges in any judicial district, provided that there shall be at least one judge in any district established by law, and may divide the state or any part thereof into new districts, provided that each be formed of compact territory and be bounded by county lines. But no change in the number of boundaries of the district shall work a removal of any judge from office during the term for which he has been elected or appointed. Any judge of the District Court may hold court for any other district judge and shall do so when required by law.'"

**CHAIRMAN GRAYBILL:** Mr. Swanberg, would you explain the differences between that and the minority report.

**DELEGATE SWANBERG:** The text of the proposed amendment, Mr. President [Chairman] and fellow delegates, is the text of the majority report on page 21. It's a little difficult to talk on this subject at the present, because we are not now discussing the election of judges. But the intent of it is simply to provide that the judges of the District Court shall be elected as they are at the present time and that this body of judges so elected shall form a commission who shall appoint the membership on the Supreme Court.

**CHAIRMAN GRAYBILL:** Well, in other words, Section 5, which is all you've moved, at the present time provides for the election of district judges, right? The point is that the minority report Section 5 does not say yet how those judges will be selected. And you have said in your Section 5 that they will be elected, is that right?

**DELEGATE SWANBERG:** Mr. President.

**CHAIRMAN GRAYBILL:** Very well.

**DELEGATE SWANBERG:** It could be the amendment which I propose probably should be considered in the minority report, when the method of selection of judges comes up. And at that time, the amendment which I propose could be shortened to simply provide that the judges of the District Court shall be elected as they are at the present time.

**CHAIRMAN GRAYBILL:** Well, we're discussing the minority report, Section 5, and you've made this as an amendment. Do you want to continue it as an amendment and vote on it, or do you want to not?

**DELEGATE SWANBERG:** If we did that, Mr. President, it would require, at this time, that we start talking about the selection of judges. And I question whether the Chair wants to do that.

**CHAIRMAN GRAYBILL:** I'd rather not do that. Then do you want to withhold your Section 5 amendment?

**DELEGATE SWANBERG:** If the Chair would be agreeable to that, I would be also agreeable.

**CHAIRMAN GRAYBILL:** Well, as I see it, the minority report simply talks about judicial districts and does not speak to the issue of how the judges are selected.

**DELEGATE SWANBERG:** That is correct.

**CHAIRMAN GRAYBILL:** Therefore, it would seem to me that it might be proper to withhold this and that you might be able to put it in at some other time. But I don't want to say that if we adopt Section 5, that we won't have adopted it. It doesn't seem to me that the Section 5 judicial districts language is very different in your proposal than it is in the minority.

**DELEGATE SWANBERG:** That is correct.

**CHAIRMAN GRAYBILL:** Very well. Let's withdraw your amendment and hold it.

Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman. I am concerned that Delegate Berg said that there was no substantial change in language from our present Constitution, yet the two words "and magistrates" are inserted on line 21, which do not appear in our present Constitution. I'm concerned that this might, by the back door, be adopting the Montana Plan. So I move to strike from line 21, at page 41, the two words "and magistrates". That change does not in any way change the fact that judges could be construed to include whatever lower court level is evolved.

**CHAIRMAN GRAYBILL:** Very well. Mr. McNeil has proposed an amendment to strike the words "and magistrates" on line 21, so that it just reads "the number of judges in each district" —

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I suspect that Mr. Berg will accede to it as having just been an oversight.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** I do accede it, because it is an oversight.

**CHAIRMAN GRAYBILL:** It's an oversight that they didn't change that. Is there any other discussion?

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman. I was discussing Section 5 yesterday with Justice Castles, who was just completing some time in connection with the criminal code discussion. And he called to my attention that in the wording that they had adopted in connection with the proposed criminal code, the word "magistrates" was used in this and that he hoped it would be continued in the new Constitution. And his reasoning was this: that in different areas of the State of Montana, it is possible that it would be necessary to have a magistrate appointed who would have no other duty whatsoever except to receive bail, inform a person of his rights, or do the things that a United States commissioner now does. And for that reason, he hoped that we would see fit to continue the word "magistrates". I give this to you for your consideration in striking a word out, of this kind. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of Mr. McNeil's amendment to strike the words "and magistrates" from line 21 of Section 5 on page 41, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and so ordered.

Mr. McNeil.

**DELEGATE McNEIL:** Would Delegate Berg yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Berg?

**DELEGATE BERG:** I yield.

**DELEGATE McNEIL:** Mr. Chairman. Mr. Berg, the additional language that you've inserted in the last paragraph that the Chief Justice may, upon request—my question is, upon request of whom?

**DELEGATE BERG:** We thought the amendment was quite clear that it was upon the request of the district judge or the judge that may be asking for assistance. That was the opinion of the ad hoc committee.

**DELEGATE McNEIL:** Is that upon the request of the judge to be assigned or upon the request of the judge desiring assistance?

**DELEGATE BERG:** The one desiring assistance. We thought that would be clear from the nature of the language.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President, will Mr. Berg yield, please, to a question?

**CHAIRMAN GRAYBILL:** Mr. Berg?

**DELEGATE BERG:** I yield.

**DELEGATE DAVIS:** Mr. Berg. The last paragraph provides a "chief justice may, upon request, assign" and et cetera. Do you thereby intend to exclude the present system, where the judge of a District Court may hold court for any other district judge between themselves?

**DELEGATE BERG:** No, we purposely left this with a permissive "may". We did not intend to in any way affect the present system, which is statutory, on the method of calling in other judges upon disqualification.

**DELEGATE DAVIS:** And for the sake of the journal we're making and the record now, they can still do it as they are presently doing it, if they wish?

**DELEGATE BERG:** Yes, we consider the present voluntary system to be very adequate, but we felt that there may be situations arise where a judge in one city or another may be overwhelmed, and he could request appointment by the Supreme Court.

**DELEGATE DAVIS:** Thank you, Mr. Berg.

**CHAIRMAN GRAYBILL:** Mr. Melvin.

**DELEGATE MELVIN:** For the information of Delegate Davis and the lay people, the court indicated that this was entirely proper and that the present system was working very well.

**CHAIRMAN GRAYBILL:** Very well. Members of the committee, you now have before you on the motion of Mr. Berg that when this committee does arise and report, after having had under consideration Section 5, as amended, that the same be recommended for adoption. All in favor, please say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** It's adopted Will the clerk please read Section 6 of the minority report.

**CLERK HANSON:** "Section 6, Terms and pay of judges. Justice of the Supreme Court, District Court judges and other judges shall be paid as provided by law, but their salaries shall not be diminished during their term of office. Terms of office for Supreme Court justices shall be six years. Terms of office for District Court judges shall be four years. Terms of office for other judges shall be provided by law." Mr. Chairman, Section 6.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** I move that when this committee does arise and report, after having under consideration Section 6 of the minority report as is found on pages 41 and 42 of the minority report, that it do pass the same.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** The first sentence of this section relates to the method of pay of all judges, and it leaves their salaries to the discretion of the Legislature, except that the Legislature may not diminish the salaries of any judge during his term of office. Now, this provision that it may not be so diminished has been contained in our present Constitution. It was done by amendment, and the committee felt that it should certainly be continued in the new Constitution. Insofar as the terms of offices are concerned, those relating to the Supreme Court now are six years, those relating to District Courts now are four years; terms of offices of other judges—since we are leaving the lower court system up to the Legislature, we felt their [illegible] might [illegible] be left to legislative discretion. I might remark that when [illegible] to get into the question of the selection of judges, there may be a motion to reconsider the [illegible] of office of the judge of the District Court, [illegible] entirely upon the method of selection [illegible] And I [illegible] remark in that regard, as I think Mr. Aronow has already indicated, that we expect the selection of judges—[illegible] many amendments, to many different methods of selection, and depending upon which one may be selected, it's possible that a motion would be made to reconsider only the term of office for the district judge.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman. Mr. Kelleher has passed out to the delegates a proposed amendment removing from the proposed Section 6 the terms of office. I presume he's going to move that in due time. Now, Mr. Kelleher has [illegible] out a proposed amendment to Section [illegible] the selection of judges, which goes back to the proposed Montana Plan. I suggest we can make no intelligent vote on Section 6 at this time, until we know whether we're going to have selection under the Montana Plan, under the minority plan, or election of judges. And I suggest we delay consideration of Section 6 until 2 o'clock or such other time as we finally arrive at the final vote on Section 7. Because Section 6 is dependent upon Section 7. I therefore move that we delay con[illegible] Section 6 at this time, until 2 o'clock or until such time as Section 7 is finally voted upon.

**CHAIRMAN GRAYBILL:** Just a moment. Mr. Berg, I take it the sense of Mr. Holland's motion is to consider Section 7 before Section 6. [illegible] the minority have any objection to that?

**DELEGATE BERG:** No, I would accede to that, especially in regard to my comments regarding the term of office of the district judge. It may be dependent upon the method of selection used

**CHAIRMAN GRAYBILL:** All right. Is there objection from anyone in the body to consid[illegible]

Mr. Blaylock, what is your plan?

**DELEGATE BLAYLOCK:** I want to ask Mr. Berg a question in regard to that section. Since we've already provided in the Legislative Article that a salary commission shall be established by the Legislature to set the salaries of the Executive, Legislative and Judicial elected officials, is this section even necessary?

**DELEGATE BERG:** Well, I think it is insofar as the power to diminish the salary is concerned. I think it's consistent with the commission setup in the Legislative Article, in that their salary will be as provided by law. So I think it's consistent.

**CHAIRMAN GRAYBILL:** Is there any objection to considering Section 7 before Section 6? Hearing none, the Chair will accede to the motion of Mr. Holland, and we will leave Section 6 until later, and we will have the clerk read Section 7.

**CLERK HANSON:** "Section 7, Selection of judges. In all vacancies in the office of Supreme Court justices and District Court judges caused by death, resignation, removal, retirement or failure of an incumbent judge to file a declaration of candidacy for his succeeding term of office, the Governor of the state shall nominate a Supreme Court or a District Court judge from nominees selected in the manner provided by law. If the Governor fails to nominate within 30 days after receipt of the names of the nominees, the Chief Justice or acting Chief Justice shall make the nomination. Each nomination shall be confirmed by the Senate, but a nomination made while the Senate is not assembled shall be effective as an appointment until the end of the next session of the Senate. If the nomination is not confirmed by the Senate, the office shall be vacant and another selection and nomination shall be made. Before the close of filing for nominations in the first primary election after Senate confirmation, the name of the appointed judge shall be placed on a contested, nonpartisan ballot if other candidates have filed for the election to that office. If there is no primary election contest for the office, the name of the appointed judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his approval or rejection. Thereafter, the elected judge shall be subject to approval or rejection in a general election for each succeeding term of office. In the event of a rejection of a judge, another selection and nomination shall be made in a like manner." Mr. Chairman, Section 7.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** I move that when this committee does arise and report, after having under consideration Section 7 on pages 42 and 43 of the minority report, that it approve and do pass the same.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** I want to explain to the Convention that the minority has proposed this particular method of selection and that we also have an alternate method of selection. And I would like, briefly, to discuss the two concurrently. I understand Mr. Mason now has, or shortly will have, his proposed amendment to this section. Yesterday, I spent, in my discussion of the minority report, considerable time on the method of—I want to just briefly review the method as it is in Section 7 before you now. It provides for a—what we call "merit selection" in this, that it would create a committee—that is, a committee would be created by the Legislature—which would submit nominees, and that means more than one, to the Governor, and the Governor would then nominate that one from those names. The successful nominee is, nevertheless, subjected to Senate confirmation. After Senate confirmation, at the first primary election, any lawyer or other qualified candidate may run against this appointed judge, and the successful candidate at that election becomes the elected judge. Thereafter, under the plan as it is before you now, the elected judge will stand only on approval or rejection. If he is rejected, the same process will be repeated. That is, there will be, initially, merit selection, Senate confirmation, election and thereafter what is known as "merit retention", or the right of the electorate to approve or reject the elected judge, whether he has a competitor or not. Now, I want to briefly tell you what the proposed amendment is, as I'm sure Mr. Mason will give it to you, as it relates to this one. It simply does this: it opens up the elective process at all primaries. Under this system, as is before you on pages 41 and 42, the appointed judge—that is, the nominated and appointed judge—stands only one competitive election until he's otherwise rejected. Under the amendment, which Mr. Mason, I'm sure, will have before you, he would stand competitive election at all times when anyone filed against him. Whether—if he was not filed against, he nevertheless would still come on the ballot for approval or rejection. Now these two, what I might call alternate, methods of selection are basically the minority proposal. And I'll not speak any further on it. I think from here on out, this is a job not for the lawyers especially, but for the other 76 delegates here to really seriously consider and decide, individually and for yourself, so I say to you, "Have at it."

**CHAIRMAN GRAYBILL:** I see you up, Mr. Melvin. Mr. Holland, my point is, apparently, that Mr. Melvin should move his amendment to the majority report before your amendments, is that right?

**DELEGATE HOLLAND:** Yes, I think so.

**CHAIRMAN GRAYBILL:** Very well. Mr. Melvin.

**DELEGATE MELVIN:** Mr. Chairman The amendment I proposed has been distributed to the various desks. And it provides an amendment to Section 7 on pages 42 and 43—starting on page 42 with line 26. Would the clerk like to read the amendment, please.

**CHAIRMAN GRAYBILL:** —Clerk, will you please read the amendment? Mr. Melvin's amendment. No, he just asked you to read it.

**DELEGATE MELVIN:** Okay, I'll go ahead.

**CHAIRMAN GRAYBILL:** No, the clerk will read it. I'll read it—Go ahead.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 7, Selection of judges, being pages 42, lines 26 through 30, and page 43, lines 1 through 8, to read as follows: 'Before the close of filing for nominations in the first primary election after Senate confirmation', and this is inserted, 'and at the primary election prior to each succeeding term of office', end of insert, 'the name of the appointed'—striking 'appointed' and inserting in lieu thereof 'incumbent'—'judge shall be placed on a contested, nonpartisan ballot if other candidates have filed for election to that office. If there is no primary election contest for the office, the name of'—strike the word 'appointed' and insert in lieu thereof the word 'incumbent'—'judge shall nevertheless be placed on a ballot in the general election, allowing powers of the state or district the choice of his approval or rejection'—striking the following language: 'thereafter, the elected judge shall be subject to approval or rejection in a general election for each succeeding term of office', end of the strike. And to further read, for 'In the [illegible] of vacation of a judge, another [illegible] shall be made in like manner'. Signed: Melvin."

**CHAIRMAN GRAYBILL:** Mr. Melvin.

**DELEGATE MELVIN:** Mr. Chairman. In substance, ladies and gentlemen of the Convention, [illegible] primary elections. [illegible] only that, but it's going to widen the horizon for the voters. It gives them an opportunity to vote in primary elections on the persons who have filed for the district judge, and then in the [illegible] in conjunction with the rest of the section, you'll see that it provides [illegible] between two candidates, or, if there's only one candidate running, then rejection or approval of that incumbent candidate. Now, we noted in our statistics that since [illegible] there have been 84 elections for district [illegible] there were 18 incumbents. Only one of the incumbents, incidentally, was turned out of office. But this means that since [illegible] there have been 66 elections where the voters [illegible] was assured of election by receiving a mere vote. And this particular [illegible] I think, will overcome that area. Not only that, but I think that this affords the voters an opportunity to select in all primary elections. Let us assume, for instance, that a lawyer who has [illegible] years now decides to run for the office of district judge. With the [illegible] election time, anyone [illegible] candidate can file for the office. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman. I have a substitute motion. Substitute motion is in the Judiciary Committee Proposal dated February 26, 1972, and the substance is in the second paragraph [illegible] I move that [illegible] will [illegible] second paragraph of the proposed amendment I have up there.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 7 of the Judiciary Committee minority proposal, being page 42, lines 10 through 30, and page 43, lines 1 through 8, by deleting the section in its entirety and inserting in lieu thereof the following material: 'The justices of the Supreme Court shall be elected by the electors of the state at large, and the term of the office of the judges of the Supreme Court, except as in this Constitution otherwise provided, shall be six years. There they shall be elected by the electors of each judicial district one or more judges of the District Court, as provided by law, whose term of office shall be four years'. Signed: Holland."

**DELEGATE HOLLAND:** On the second line of that amendment, I think you made a mistake. You read "judges of the Supreme Court", rather than "justices of Supreme Court". The record so indicate?

**CHAIRMAN GRAYBILL:** It says "justices", yes.

**DELEGATE HOLLAND:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Like Mr. Berg, I spoke about the majority proposal the other day. This is the majority proposal for the election of the Supreme Court judges and the election of the District Court judges. I'm not going to speak at length about this. I do wish to point out that, historically, the State of Montana—the people of the State of Montana—have had control of their Judiciary through the election of the judicial officers. But, there is no—The testimony before the committee was to the effect that the present Judiciary is superior; its courts are current, and it's working fine. I believe that, overwhelmingly, the people of the State of Montana want to retain their right to vote for judges. I sincerely urge this committee not to give up this valuable right and to retain the full election of your Supreme Court and your District Court judges.

**CHAIRMAN GRAYBILL:** Where is Mr. Kelleher? Is Mr. Kelleher in the chamber? Very well.

Mr. Schiltz. Just a moment.

Mr. Kelleher, the situation now is that we have a minority report moved by Mr. Berg. We have an amendment to the minority report by Mr. Melvin, giving a second alternative. We have a substitute motion by Mr. Holland for the election of judges. Now, Mr. Kelleher, you are—it is not in order for you to add another amendment. However, if you wish to explain the amendment you will make if the time ever arises, then I will let you do so, and then we'll have the four plans before the body.

Mr. Kelleher.

**DELEGATE KELLEHER:** I'll speak on my proposal to appoint judges rather than elect judges whenever the Chair deems it appropriate.

**CHAIRMAN GRAYBILL:** I think it would be appropriate for you to explain that alternative now, so that the body will have all four items in mind when they go to decide.

**DELEGATE KELLEHER:** Is it the Chair's desire merely that I explain how it operates, rather than argue for it?

**CHAIRMAN GRAYBILL:** Yes, the motion is not in order, but you may explain the motion you would make if a motion were in order.

**DELEGATE KELLEHER:** But I will be allowed to argue later on in support of my motion?

**CHAIRMAN GRAYBILL:** If we ever get to that point. The point is, we really have four plans. We have two minority plans. We have the majority or the—at least, Mr. Holland's plan to elect, and I take it you want to move the Montana Plan of appointive judges. Now, I don't know whether you want to move it, but I want to get all of those ideas before the body, and then the body will act. Whether or not you have an opportunity to amend or not will depend on how they act.

**DELEGATE KELLEHER:** Well then, I better say—make my comments now. They're very little.

**CHAIRMAN GRAYBILL:** Keep them brief, please, as the others have—

**DELEGATE KELLEHER:** Yes, sir, I plan to. Fellow delegates. In short, my proposal that you have before you would provide that the Governor of Montana would get two or four names—say from a commission as it appears later in the minority plan—and appoint one of those four lawyers, or two lawyers, as a judge. And this judge would serve during good behavior. Now, this is nothing new; it's nothing but the federal plan, really. And the federal Judiciary has used it for—well, close to 200 years, since the days of [the] Revolution. Our Supreme Court judges and our District Court judges are appointed according to that plan. Now, this plan that I have here has—Professor, can I have your attention please? You're now in my class—has two advantages over the federal system. It catches the nominees coming in—it screens them coming in, which we don't have under the federal plan, right? And it screens them or gets rid of them on going out, right? Both ways. Now, under the federal system, Harry Truman could appoint one of his own cronies from the Pendergast machine down in Kansas City as a federal judge. He might or might not ask the American Bar. You know what trouble Mr. Nixon had with the American Bar Association. I don't know whether he's going to ask their opinion anymore. After these people have been screened, their names would go to the Governor. The Governor [would] appoint one and then they would go to the Senate for approval, for additional screening. How long would they serve? They would serve during good behavior. Now, there were two proposals that I talked to a lay delegate here about it. I asked him about two other matters, and that was the age limitation. I was going to put in an age limitation of 65, and I decided not to. He's thought it should be there. I'm going to still leave that out.And one district judge told me that he thought age 60 for a trial judge was a good cut-off date, and I'm not so sure he's wrong. Because those of you—most of you are trial lawyers—know that the strain on trial judges to make decisions like that is very hard and very difficult, especially in the larger communities. Another change I would have—plan to make if you accept my proposal when we get to the commission, I do not want any lawyers on the commission—just lay people. In that way, it would not be suspect. Let's face it, the lay people in this Convention Hall are no different than the lay people on the outside. You distrust lawyers. That's a fact of life. You distrust us as a profession. And I see the professor nodding concurrence. (Laughter) Now, as far as appointing judges rather than electing—Oh, I told you how we would screen them going out. We'll have the minority's report for screening them, to get rid of them at the tail end.

**CHAIRMAN GRAYBILL:** That's repetitious, Mr. Kelleher. Keep going.

**DELEGATE KELLEHER:** All right, thank you. Now, what is the difference between electing judges and electing legislative candidates? A legislative candidate is a partisan politician. He's concerned with taxes, the type of taxes, where revenue is coming from. He is concerned with spending, and this is a very important matter. What are you going to do with your money after you've collected it? Whether it goes for schools or roads, he's concerned with spending money for environment or not spending it, and so on. A judicial candidate—I have run for Congress twice. I think there's only one other member in this chamber that can say that. We're both losers. (Laughter)

**CHAIRMAN GRAYBILL:** You're out of order, Mr. Kelleher. You're totally out of order. [illegible]

**DELEGATE KELLEHER:** —Supreme Court justices and candidates for Supreme Court [illegible] and I've always [illegible] them. At [illegible] we had something to say. We might not have [illegible], but we had something to say. But the [illegible] candidate, what can he say to you? "I'm going to give you Republican justice." "I'm going to give you Democratic justice." Is he going to say, "I'm going to rule for Montana Power if you have a [illegible] case"? Is he going to say, "I'm always going to rule for widows and orphans"? What [illegible]? So this nonsense about electing judges, I say we're just trying to kid ourselves. The people know that they don't elect judges. My clients call me, your clients call you and say, "Who should I vote for, Judge X or Judge Y"? They don't [illegible]. I understand a proposal has been made that we appropriate money for these judges to run, [illegible] need to worry about "bi" judges—a very real concern and worry. You will recall, the members of the Finance Committee and the Legislative Committee, that I put in two proposals to appropriate [illegible] allow taxpayers to adopt a new federal plan, where they could—

**CHAIRMAN GRAYBILL:** Now, Mr. Kelleher, I do want you to stick to the issue of appointing judges. I'm not interested in your other proposals. I'm going to give you time to make your speech, but I'm not going to have an hour speech. You're either going to limit yourself to that, or you're going to be out of order.

**DELEGATE KELLEHER:** I just want to talk about—

**CHAIRMAN GRAYBILL:** You can talk about appointing judges or else sit down. Your motion is out of order. You may explain the motion you would make if you had the chance. That's all you may do. Now, we're going to get this decision [illegible] this morning, and you're not going to talk about everything else. So, either decide to talk on [illegible] issue or please sit down.

**DELEGATE KELLEHER:** The judge who is elected is going to be the popular judge. He not necessarily will be the best judge, but he will be the most popular judge. There are many examples of that, and in view of the Chair's ruling, I'm not going to go through those. Under the present system, a senile judge may be elected, and I think even the lay people know of senile judges who have been returned to the bench because they were popular judges. A judge very often must make an unpopular decision. Every time a judge makes a decision, you must understand that there must be a loser. That's the nature of the judging business. If he makes an unpopular decision in connection with a criminal case, this may cost him election. Judge Bottomley, in 1954, almost was defeated—lost many votes over an unpopular decision. In Oklahoma, they elect judges, and they had a very unfortunate situation down there with two associate justices and, I believe, the Chief Justice, involving bribery. If you elect judges that don't—I mean, appoint judges that don't need to run for reelection every four years or six years or worry about [where] their money's coming from, you've got a true independent Judiciary that you don't need to worry about. And we talk about humbling judges—there's a lot of difference between humbling a man and humiliating him and requiring him to go down and to beg for money. And I think when you do require a candidate for a judicial office to beg for money, that you're opening up the door to many abuses. Finally, the last argument is that the lay people do not want elected judges. I say that we should have the courage to make a decision and then let the people in June decide whether they want elected judges or appointed judges, when they accept or reject the Constitution. It is time that we had the courage to make a decision on the floor of this chamber. Our people do not necessarily want elected or appointed judges. What they want are the best judges and the most competent judges, and the only way we're going to get them is by appointing them. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Ladies and gentlemen of the body, you may wish to take your pencils and jot down some notes on where we stand. Mr. Berg moved a minority report on page 43—42, rather, and 43 of Section 7. The purpose of the minority report is to have a commission set up by the Legislature that would give the Governor nominees, and the Governor would nominate from the commission, or from whatever method the Legislature has determined, I should say. Now, at the first primary, there would be a contested, nonpartisan election. Later on, if that judge passed that test, he would only have to stand for approval or rejection. And until he was rejected, he would continue to serve. And if he was rejected, we'd go back through and the Governor would appoint somebody else and we'd have another contested, nonpartisan election—the point being that once he passes his first contested, nonpartisan election, he only runs on approval or rejection. Now, Mr. Melvin moved an amendment. That's number two plan. The purpose of the amendment is to say that at each succeeding election, this man that's been appointed in the manner we've just said and has run must always run at a contested, nonpartisan election. At each succeeding primary, we go right back through and his name is automatically on, but others can come on if they want to. Mr. Melvin's plan amounts to changing considerably the method of selection; that is, it uses the minority plan's method of selecting but it does require regular elections. Then, Mr. Holland moved a substitute motion, which is essentially the majority report boiled down, and it requires the election of judges—the Supreme Court for six years and the District Court for four years. So, we have those three plans before us. Now, because of the rules where we only allow one substitute and two amendments, Mr. Kelleher did not have a motion available. I had him explain to you that if a motion were available, he might make the motion to have judges appointed to serve on good behavior. That alternative might become available, depending on what you do with the upper three. Now, the argument is on Mr. Holland's motion for the election of judges. That's the last substitute amendment. So the debate will be on Mr. Holland's substitute motion that judges be elected, instead of the manner provided by the minority or Mr. Melvin's amendment. Is there discussion?

Mr. Swanberg.

**DELEGATE SWANBERG:** Is another motion in order at this time?

**CHAIRMAN GRAYBILL:** No motion's in order. You may explain another position if you want to.

**DELEGATE SWANBERG:** Mr. President and fellow delegates. I think we have arrived at one of those other major turning points in this whole Convention. Certainly, the problems in the Legislature have been met and dealt with, I think, very adequately by this body. I now submit that the time has come to deal with this other major problem, and that has to do with the election of the membership of our Supreme Court. We heard last Saturday the rather moving and half-comic description by Delegate Schiltz of the travail and turmoil that he went through in the process of running for office on the Supreme Court. And I think we can all agree that it's a rather pointless process. The electors at large do not really know the qualifications of the man they're voting for. The candidate runs nonpartisan. He's compelled to rely on his own resources unless he wants to take money from some, no doubt, interested donor. The process has to be changed. The thrust of the minority proposal is to change this by a commission elected by the Governor. The thrust of the majority proposal is to leave it as it is. You have been given these two choices, in essence. And I submit that there is a third alternative, which is simple and quite workable. When Delegate Schiltz spoke about his problems of election to the Supreme Court, we did not hear any comment at all from Delegate Berg, who is a district judge in Bozeman, about any difficulties that he had had. We can only assume, and I think it's common knowledge, that the public at large is generally satisfied with the method of the election of the District Court judges. Some attempts have been made here by the fact that, in many instances, these District Court judges run unopposed. And I would submit, for your consideration, that this applies in many other offices. And the reason is not because of a lack of interest in the job. The reason is simply because the man in office is doing a good job, and no one will run against him. This is pretty much the case in our county, not only in the case of the district judges, but I'm happy to be able to say, in the case of our sheriff. He's held office, I believe, for something like 20 years, and at no time, to my recollection, has he ever been opposed. Is that because he's inefficient or no one is interested in the office? No, it's because he's doing an outstanding job. I would submit, then, that we leave the election of our District Court judges as they are. The system is working admirably. We're getting generally good people, with an occasional person who may not be quite as qualified as someone else. But as a general proposition and taking the elective process for what it is, we get pretty good district judges in our District Courts. I don't think anybody here in the body would disagree with that. Now then, having gone that far, having provided in the Constitution for the election of our District Court judges, I submit that, having done this, we will have also created a very admirable commission for the selection of our Supreme Court justices. The District Court judges, as a body, 28 of them, would themselves be a commission for the selection of the membership of the Supreme Court. Where else could you find a commission as able as [illegible] All of them selected, all of them as free from politics as you could possibly get it, all of [illegible] of this appointment [illegible] and you would, at one stroke, have eliminated the problem of the election of the Supreme Court justices by the people in an inadequate manner and also have provided a very [illegible] commission for the handling of the Supreme Court personnel. I have submitted a substitute amendment [illegible] which would provide that the District Court judges be elected as they are now and that this group, acting as a body, under such terms as may be prescribed by the Legislature, would appoint and fill vacancies in the Supreme Court. Third, there is precedent for this. I don't know of any other state that has the system, but we get into some other fields. I would like to point out that the Pope of the Catholic Church is elected in this manner. I would rather suggest that the heads of all the other churches are probably elected in the same manner. The system has worked for centuries, and I think it would make a very admirable solution to our difficulties here. It lies in between both proposals.

**CHAIRMAN GRAYBILL:** Very well. Mr. Swanberg has explained another proposal, which you could add as a fifth point; namely, that the Supreme Court would be appointed by District Court judges, but the District Court judges would be elected. Now, ladies and gentlemen, the discussion is on Mr. Holland's substitute motion that "the justices of the Supreme Court shall be elected by the electors of the state at large, and the terms of the office of the justices of the Supreme Court, except as in this Constitution otherwise provided, shall be six years. There shall be elected by the electors of each judicial district one or more judges of the judicial district—of the District Court—as provided by law, whose terms shall be four years." That's the issue before us.

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I would like to speak in behalf of Mr. Holland's amendment. I said most of what I had to say the other day. I didn't intend it to be all that comic, but I was very serious about it. I would like to make a couple responses that bear answering. Mr. Garlington talked the other day about the problem of [illegible] as we get them and what an imposition it is upon them to require them to run for reelection and possibly be defeated and have lost their practice in the meantime. I believe, for those judges—and I know it's an imperfection in the system. However, I'm more concerned about 700,000 people than I am 33 judges. I think Montana is unique. I think we can't adopt the plan or program that we find in Missouri or some other state, because Montana has more corporate influences than any of those states. I inquired specifically of the President of the American Judicature Society, who responded about the State of Wyoming. He said, "Well, they have a railroad." They have a railroad that has an influence. We have a railroad plus. As to Mr. Swanberg's comments, I think, personally, that it's more important to elect the Supreme Court judges than it is the District Court judges. The District Court judges aren't making policy. And it's the policy that the Supreme Court makes that should be rejected or adopted by the electorate. I think also that—I can't resist throwing in something every now and then, Bill—but, your thing about the Pope in Rome being elected in this fashion. The fallacy in that is the Pope doesn't have a bunch of Baptists helping in on the election either. (Laughter) So far as Mr. Berg's proposition is concerned, it has the terrible fault that always we start with an incumbent, and the same is true with Mr. Melvin's. The incumbent system in the State of Montana has been the real problem. It has insured the election of anybody who was appointed by the Governor. But, finally, I must urge you that we have, with Mr. Holland's plan, absolutely the best screening process in the world, and that is the electorate. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Rod Hanson.

**DELEGATE ROD HANSON:** Mr. President. I rise in support of Mr. Holland's motion. I served on the Judiciary Committee, as you probably, most of you at least, know, and I was divided—I had mixed emotions between the two plans, because I was dissatisfied with the present court system. And we worked long and hard to try and devise a method of appointing a committee that would be a nonpartial committee or a committee that would not be controlled by some special interest or interests. And the Committee agreed, I think, that we could not do this, because we decided that we would not determine how to arrive at the proposition of this committee ourselves, but pass it on to the Legislature. And if this committee, in our group, with the witnesses and the testimony that we had, couldn't compose a committee that would not be controlled, then I don't know how the Legislature is going to do that. It was said that the reason that our judges are always reelected is because they must be good judges, and if they made an unpopular decision, you can be assured that they would be tossed out of office. I can assure you that there have been several unpopular decisions, in my mind, and they were reelected. So I think that with Mr. Holland's proposal, and then his proposal later on, which says, in effect, that a person who is appointed to the justice position cannot run for reelection for at least a year, would take care of this. Mr. Schiltz pointed out Saturday that in the selection of the commission that handled the works for this Convention, they picked 16 people—4 from the House, 4 from the Senate, 4 from the Supreme Court, and 4 from the Governor, and each body selected 2 from each political party. And with this wide diversion of selection, Delegate Schiltz pointed out that we had four representatives on the commission that were representatives of the Montana Power Company. If this is the case, then I am sure that we are going to have a tough time, whether we devise the method of selecting the committee or whether the Legislature, in its wisdom, finally is allowed to devise the means of selecting this committee, that we're going to have a hard time coming up with a committee that does not have at least some semblance of control by some special interests. And I submit that after struggling with this decision for the several weeks that the committee has worked, I have decided that it's best to leave it with the people, because I think that in the long run, the people are going to make the best decision. We are, at least, not going to have to worry about some particular group of people controlling the people unless they can do it the hard way, and that is to get out and get to all of them that vote. So I think that we do stand the best chance by continuing the election and, I would hope, later on adopting the provision that a person appointed cannot seek reelection for at least a year, because I think therein will take care of the problems that we have under the present system, where anybody that is appointed to a judgeship gets reelected for at least one or two reasons that are pretty evident—and one is that it's pretty tough for a lawyer who has to appear before the court to run against the man that he has to appear before. And so, for that reason, I think you don't get too many people that challenge an incumbent judge. And the second reason is that, of course, we all know that once your name is well known and you are an incumbent, unless there is something pretty wrong, that your chance of getting reelected is much greater than it is if you're a newcomer on the political scene. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, I rise in support of Mr. Mason's amendment and opposition to Mr. Holland's substitute motion. I think that this body is agreed that we need to have an independent Judiciary. I think where we're hung up is our definition of how we get an independent Judiciary. I do not believe that the system which we have now really provides for election of judges. I feel that we go to the polls by rote—we vote for the person who has been nominated by the Governor, without consultation with anybody. I think that if we offer this to the public to vote on in June, we have actually given them no choice at all. If they're happy with what we have now, they can vote against what we're going to offer them. If we offer them exactly what we have now, they have not been given a choice. I agree with Mr. Hanson that people are going to make the decision, or at least I think they ought to be given the chance to make the decision. We did, in fact, discuss for a long time how we were going to select a committee that was going to be pure enough to select a candidate for judge, and it's impossible to select a committee that's going to be that pure. I don't think that any of us are that pure. For this very reason, I think it's extremely important that we do not spell out the mechanics of the composition of such a committee. If we spell the mechanics out wrong, then we're stuck with it. If we leave it to the Legislature and they make a mistake, it's much easier to rectify the mistake. I do not believe that there's any more justification for the supposition or suspicion of universal venality in human nature than there is for the supposition of universal rectitude. Some good judges will be obtained under almost any system that we decide to go with. I'm merely saying that under the minority proposal, we have a much better chance of getting better judges.

**CHAIRMAN GRAYBILL:** Mr. Harlow.

**DELEGATE HARLOW:** Mr. President, I rise in opposition to the majority plan—or Mr. Holland's plan and in support of Mr. Melvin's plan. I oppose Mr. Holland's plan on the basis that it is working poorly now. We have no control over whom the Governor appoints. It has been proven by history, the appointee of the Governor tends to succeed himself. This is not the time to talk strongly or discuss Mr. Melvin's plan, but it [illegible] all the good things that we need in the selection of judges, all the good things that we [illegible] have in giving the choice to the people, and I think it is time now to turn down Mr. Holland's plan and come to the discussion of the good points and the fine points in Mr. Melvin's plan.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President. Is an amendment to the proposal now under discussion in order?

**CHAIRMAN GRAYBILL:** No.

**DELEGATE DAVIS:** It is not in order?

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Will Delegate Holland yield to two questions, please?

**CHAIRMAN GRAYBILL:** Mr. Holland?

**DELEGATE HOLLAND:** I yield.

**DELEGATE REICHERT:** Mr. Holland. Under Mr. Melvin's plan, is it not true that, despite the fact that there would be one nominee who would have gone through this commission and been appointed by the Governor and been confirmed by the Senate, in addition to this nominee, there could be other nominees? It says something to the effect that a contested, nonpartisan ballot—Is it not true that this would be election in the true sense, except one of the candidates would have been nominated?

**DELEGATE HOLLAND:** The problem with Mr. Melvin's plan is: initially, someone is picked by a commission. The names are submitted to the Governor, and that person then fills the office. Later on, there are contested elections. In other words, that person can be defeated. But, under the majority plan there would be no one appointed when there was a vacancy occurring or when the judge didn't intend to run. No one would be appointed. Those desiring to run would run on their own merits. Now, the basic objection I have is that we just feel that we couldn't get an unbiased commission, that the commission would pick the first candidate. If a special interest group dominated the commission, then we would have that person in as an incumbent, and the other candidates wouldn't have an equal chance for the office. Under majority plan, all candidates for the office and generally, when there is a vacancy, there are more than two—run, and the electorate has a full choice of everyone who wishes to run.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** My second question is, at the Romney hearing where we discussed the Judicial Article, Mr. Melvin had his tentative alternate to the minority report, and it was essentially what we have now. My question is—at that time, I have in my notes that Mr. Holland could support this. How do you feel now?

**DELEGATE HOLLAND:** I told Mr. Melvin I could live with it. I find it greatly superior to the minority plan as advanced by Mr. Berg. Basically—I might as well say this now—Mr. Berg the other day stated that the majority had not considered merit selection, as they call it. We did. We asked all the proponents of the Montana Plan, "How can we guarantee that this commission—the ones that name the candidates—won't be dominated by some special interest group?" And they told us, fairly, there is no way they can do so. Mrs. Bowman—if I understood the sense of what she just told us—it's the same thing. I have honestly tried to figure out how we could do it. And I came to this conclusion: that if the Legislature, who is going to implement this thing, if the Legislature were to delegate to the Secretary General of the United Nations—that he'd say, "All right, pick a country, any country in the world, but just don't tell us who it is." Let's say nobody in Montana would know, and they picked, let's say, Germany. They pick the five best legal minds in Germany, then when a vacancy occurred—they wouldn't know they were picking for Montana—the choice would be sent over to Montana, and then they would pick the right man. The reason I worry, even about an elaborate scheme like that, is because I know a man in Butte, Montana. He's got an office over there. If such a commission were picked in Germany on Monday, he'd have that commission out to dinner by Wednesday, and by Friday they'd be checking every decision with him. I mean this sincerely. This—

**CHAIRMAN GRAYBILL:** All right. But I think you've answered the question. (Laughter) Now, the Chair has been—it's been called to my attention that I may be wrong on my last ruling, and that is, that we have the minority report which was moved. Then, we have Mr. Melvin's one amendment and the substitute motion, and I guess I am in error in that I should allow amendments to the substitute motion if they're on the subject of the substitute motions. So Mr. Davis, I think I was wrong in ruling you out of order.

**DELEGATE DAVIS:** That's quite all right. At this time, if it please the Chair, I would like to amend—and I haven't had time to have it typed and placed on the desks, so I'll give it to you as soon as I read it, if I may—to add a second paragraph to the majority proposal which, in effect, is the last sentence of Mr. Melvin's, which would read as follows: "If there is no primary election contest for the office, the name of the incumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his approval or rejection. In the event of rejection of a judge, his office will be declared vacant and filled as herein provided for filling of vacancies."

**CHAIRMAN GRAYBILL:** Now, I don't see that as the last sentence of Mr. Melvin's.

**DELEGATE DAVIS:** It's not—it's a little departure from the last sentence but—

**CHAIRMAN GRAYBILL:** This sentence, "If there is no primary election contest for the office, the name of the incumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his approval or rejection." Is that it?

**DELEGATE DAVIS:** Yes, sir, and in addition, "to provide in some manner"—and my language may not be quite proper—but, in the event of rejection of a judge, another—the vacancy will be filled as provided under the title on vacancies, however we come up with that.

**CHAIRMAN GRAYBILL:** Well, I think if you left it out, you'd still have it covered, because there would be a vacancy.

**DELEGATE DAVIS:** That's probably correct.

**CHAIRMAN GRAYBILL:** All right. Mr. Davis' amendment has the effect of adding language which you have on your desks. It's the middle sentence of Mr. Melvin's proposal, and it would add that to Mr. Holland's language. Mr. Holland says that the judges shall be elected and then sets up the term of the Supreme Court and the District Court. And Mr. Davis' amendment would add this sentence: "If there is no primary election contest for the office, the name of the incumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state and district the choice of his approval or rejection". Very well. The issue is on your amendment, Mr. Davis.

**DELEGATE DAVIS:** Mr. President. I think perhaps we can accomplish some of the things we're trying to do by this amendment in the form of a more or less compromise. There's really not this big a difference between any of these. They're first appointed, but at the moment, they're appointed by the Governor. There's no reason that I can think of why the Governor won't make the best appointment of the best person available, or any Governor at any time. And I am sure that the committee is not going to change this too much. But there's another thing that concerns me, and that is the right to run for public office. We've got a lot of rights going to come under the Bill of Rights. Who's going to have the right to run for public office? Can anyone in the United States still be able to run, or are we going to have a select committee tell us who has the right to run? That concerns me very much and has throughout this discussion. You can say what you want, any select committee's going to be a committee of the establishment. There's just no other way to get around it, or else you're not select in the eyes of the people. So if I want to run for office, I probably would not be qualified, because I probably wouldn't meet some of the blue-ribbon standards—blood-testwise or otherwise, whether it was blue enough. But you should have the right to run. In our county, we had elected a judge who recently passed away—an outstanding judge, Judge Phillip Duncan. He had a doctor's degree from Stanford, when a doctor's degree required a lot of extra study. He was reelected by the people. No one ran against him. Now that statistic, when you put it in the statistics you folks are using, is bad. He was kept in. No one ran against him. But he's the best-qualified man, I think, not only in our county, but I would say in the State of Montana—a great judge, and he died in a courtroom at 5 o'clock on a Saturday afternoon, when he was doing extra work, which he did all the time. On his death, a fine Democratic friend of mine was appointed to fill his spot. He was the incumbent then, after election came. But there was a gentleman from Virginia City, Montana—his name was Frank Blair. He had practiced there for 80 years, and he thought, "Well, I think I'll run for this job." Now, Judge Blair wouldn't have been qualified under anyone's conceivable standards by any standard commission you could put up. But

Judge Blair said, "I think I'll run for this", and everyone kind of laughed. He's 80, he had practiced law, he had practiced water law, mining law, plaintiff's law, defense law, for all his life. He's a man of great strength of character and also of great physical ability, because he wears all the rest of us lawyers into the ground. So, what's he do? He gets in his car and he goes all over the three counties in that fine district of Beaverhead, Madison and Jefferson. And the people were amazed at his tenacity and his ability, and they thought, why shouldn't Judge Blair have the right to run? And they elected him. Well, my Democratic friend was—is still in a state of shock, (Laughter) but the gentleman got elected. He took the bench. He's probably tried as many jury cases as anybody in this state in the last year. He's held court in the three counties, he stays up until midnight to wait until—the jury to come in, and he goes back to Virginia City and he's in Boulder the next morning. Whether that's good or bad is immaterial. He had the right to seek that office after he spent a lifetime in Montana. He had a right to do it. This plan permits the election, like we're doing now. Under vacancies, you'll still fill them by appointment; but Mr. Melvin's plan, which I heartily endorse, whether it is attached to the minority or to Mr. Holland's majority, gives everybody the right to run, but it fills a second qualification: that if nobody does run—isn't that what you're really getting at? You're concerned when someone doesn't file for the office. All right. Under this one, if nobody files for the office, then you can say, "We'll keep him" or "We won't keep him" and go back to another method. I think this amendment, perhaps, would be a compromise, assuming that the right to elect judges is going to pass. I can't conceive how this delegation can say we're all for the right and have great confidence in the voters on electing State Auditors, State Treasurers, Governors, everyone in the Executive and everybody in the Legislative, that the same rules would not apply to the Judiciary. It's inconceivable to me that those same voters that are going to elect a good Governor and good legislators and a good superintendent of schools won't elect good judges. And I submit that the plan that we're working under is working quite satisfactorily. It's like all plans—there are imperfections in it; but I don't think anything this Constitutional Convention will do will really change the basic problems that you criticize. Therefore, I submit this as an amendment to the majority proposal, which I think will come nearest to solving everyone's thinking in this chamber. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman. As mover of the substitute motion, I have no objections to Mr. Davis' amendment.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman. I rise to speak in opposition to this amendment. I recognize it as a compromise, but it's only half a compromise. What it does, in my mind, is add to the elective process what is generally referred to as merit retention. That is, if there is no competitive election, the judge nevertheless runs on his record. It overlooks the value of merit selection. It depends entirely on the fulfillment of a vacancy by a gubernatorial—and I may suggest to you, pure political—appointment. Now, there's been a good deal of criticism about the so-called blue ribbon committee that would be created by the Legislature. I suggest to you that that committee, committing two to three or four names to the Governor, is going to give the Governor a fairly wide selection of nominees, and he can select what he wants—whom he wants—from that committee. But, at least, you have the assurance that that nominee has been screened, that he does meet the qualifications of what you want in a good judge. This is a feature you do not have now, and I must recall to you that this proposition will be used not only on the selection of district judges, but, more importantly, on the selection of Supreme Court judges. That is, nominees, candidates for the Supreme Court judge—or the Supreme Court justice will have been screened for their qualifications to sit on that bench. This is an assurance that the electorate does not have now, and I think you would all agree that few of us and certainly few of the general voting public are all acquainted with the qualifications, especially of the Supreme Court candidates. Now, under Mr. Mason's plan, this does not at all prevent anyone from running against that selected candidate, but it does tell the electorate this: that one of the candidates on that ballot has, in one manner or another, met some screening activities, that he is in some respect qualified. He bears the endorsement—bear this in mind—of not only the screening committee but also, under Mr. Mason's plan, the endorsement of the Senate. He goes through exactly the same confirmation process, with regard to the Senate, as any other department head that this Constitution now proposes. If you accept Mr. Davis' amendment, you are retaining the feature of what we call merit retention. You are ignoring merit selection. If you accept Mr. Mason's plan, you have the combination of merit selection, you have open election and you have what Mr. Davis is proposing in merit retention. I want the people here to clearly understand these distinctions between these proposals. Now, I should like to say, if I'm not out of order, that with regard to the minority plan, it only opens up elections the first time. That is, only on the first primary will anyone be permitted to run against that judge until he is rejected. This is a limitation. It is designed to attract lawyers who might not otherwise run for the bench. These are the differences.

**CHAIRMAN GRAYBILL:** Mr. Brown.

**DELEGATE BROWN:** Mr. President. I rise in support of Delegate Melvin's plan. I've had mixed emotions on this. I don't like a permanent appointment with no chance to ever run for judge—or have a chance to vote for an alternate. However, Mr. Berg expressed my point, but I'd like to carry it one point farther. Under the present system, we have one man—namely, the Governor—appointing judges. When Governor Babcock was Governor, he had a committee—and I don't remember how it was selected, but it was from the bar association or our attorneys from the local area. Two judges were appointed in our area. And I believe one probably wouldn't have been the Governor's personal choice, but he took this selection committee and used them, and I think we get better appointments than we would with the Governor alone making selection. So, I support Delegate Melvin.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman. I submit that under the Davis plan, we do have merit selection. I support it. The Governor is not an irresponsible individual. Like Delegate Brown, I know of certain instances where appointments were made. He does discuss those appointments with qualified people throughout the State of Montana. He's very concerned about two things: one, selecting someone competent for the job; and two, selecting someone that can dispense justice in that particular district that will satisfy the people of the State of Montana. Without that blue-ribbon system that Delegate Berg is talking about, we have the type of merit selection that I think commends itself to Montana. I support the Davis amendment.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman. The matter having come up, I can offer a little testimony on the subject of this bar association plan. I was on it. The selection of the lawyers from the Montana Bar Association to form this committee was by having election of the lawyers in each of the eight districts from which the lawyers who are on the practice commission are selected. And I was elected by the lawyers in the northwest end of the state. There were seven others. So the eight of us served as members of this committee. Without going into the detail of it, we tried to communicate with all the lawyers and size up the situation and offer some factual information to the appointing power. This committee functioned during Governor Babcock's regime. We volunteered to continue it during the present administration, and were rejected, and it has not functioned since Governor Anderson was elected.

**CHAIRMAN GRAYBILL:** Mr. McKeon.

**DELEGATE McKEON:** Mr. Chairman. I rise in support of Mr. Holland's motion and also rise in support of whatever his uncle stands for. I think that if we are to look, perhaps at the federal Judiciary and look to see what can be done by the President and his appointments in varying the tenor and tone of the Supreme Court, I think that alone might convince us that perhaps the people are best qualified to determine the way in which the court should go. I might say, Mr. Chairman, that as a law student, I felt very strongly in favor of the Montana Plan or the appointment of judges. Later, when I graduated from law school and had an opportunity to practice law for a few months, I switched 90 degrees and felt very strongly that all judges should be elected. I'm reminded of an older attorney in my district who came to me after the elections and asked how I felt on appointed versus election of judges, and I said I felt strongly for the election of judges. He told me a story—a personal experience of his—when he was a young attorney who had come to my district. He was practicing under a tyrannical judge, as he called him, and got together with the other attorneys of the district and they picked him as a candidate to perhaps usurp this judge's throne—and I use the word "throne" literally in some cases. He did usurp him, and I think the lawyers were unanimous in feeling that with the defeat of this judge, they got a better system of justice with the other judge who was elected. Also, Mr. Chairman, I think the merit system is just another word for the patronage system, and we all know where there is patronage, there is no responsibility to our patron. I am afraid, Mr. Chairman, that any committee, whether it be a blue ribbon or whatnot, will not be a committee whose interests are the interests of the people. I'm certain that the little guy will not be on the committee but feel very certain that the big guy will be on the committee. And I don't feel the big guy will be in the interests of the people. So, for all these reasons and also the reason that I think we are very arrogant if we take the right of election away from the people, I support Mr. Holland's motion. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** All right. The issue is on Mr. Davis' amendment to the substitute motion, which would add the fact that the incumbent would have to run for approval or rejection to Mr. Holland's election of judges system. Are we ready for Mr. Davis to close?

Pardon me, Mr. Scanlin. All right, Mr. Scanlin waives.

Mr. Davis.

**DELEGATE DAVIS:** In closing, I am concerned about the—the use of the word "screening" always bothers me as to who has the screen. I also want to say in closing that, as far as I'm concerned, the merit system is the voters. I don't think there's a system that has greater merit; if it applies to all the other systems from the President of the United States on down without screening, I don't know why it should apply to the Judiciary. Thank you.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Davis' amendment. Now, Mr. Holland's system is elected judges, and to the elected judges system, Mr. Davis would add this sentence: "If there is no primary election contest for the office, the name of the incumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his approval or rejection." Please vote by using the voting machines. All those in favor of Mr. Davis' addition, say Aye. All those opposed, say No. Isn't that right? Haven't I stated your motion right, Mr. Davis?

**DELEGATE DAVIS:** Except for the last sentence, which you concluded we could leave off, which is all right with me.

**CHAIRMAN GRAYBILL:** The amendment you're voting on is just that sentence that I read. It allows the approval or rejection of the voters of an incumbent that's not contested.

Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Will you please record the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Absent |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Nay |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |

| | |
|---|---|
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Absent |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 61 delegates voting Aye, 37 voting No.

**CHAIRMAN GRAYBILL:** Very well. 61 delegates having voted Aye, Mr. Davis' amendment prevails and is added to Mr. Holland's amendment. You may reset the machine.

The discussion then is on the substitute motion of Mr. Holland that the justice of the Supreme Court be elected, the justice of the District Court be elected, the terms be six years and four years, respectively, with the addition that if, in the primary election, there is no contest, the incumbent judge shall nevertheless be placed on the ballot and the voters shall have the right to approve or reject him.

Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. President. Having nothing but respect and fear of the legal profession, I rise to resist Mr. Holland's substitute motion, in support of Mr. Melvin's amendment. Thank you.

**CHAIRMAN GRAYBILL:** Very well. The issue before you then is on Mr. Holland's substitute motion.

**UNIDENTIFIED DELEGATE:** Roll call vote.

**CHAIRMAN GRAYBILL:** We'll have a roll call vote. The motion is that "the justices of the Supreme Court shall be elected by the electors of the state at large, and the terms of office of the justices of the Supreme Court, except as in this Constitution otherwise provided, shall be six years. There shall be elected by the electors from each judicial district one or more judges of the District Court, and their term shall be four years." And it now has this addition, that if there's no primary election contest, the name of the incumbent judge shall nevertheless be placed on the ballot in the general election, allowing voters of the state or district the choice of his approval or rejection. So many as shall be in favor of Mr. Holland's substitute motion, please vote Aye; and so many those opposed, vote No.

Have all the delegates voted?

*No response.*

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

*No response.*

**CHAIRMAN GRAYBILL:** Very well, close the roll.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Absent |
| Champoux | Aye |
| Choate | Aye |
| Conover | Nay |
| Cross | Nay |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Nay |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Nay |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Absent |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |

| | |
|---|---|
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 47 delegates voting Aye, 51 voting No.

**CHAIRMAN GRAYBILL:** 51 delegates having voted No, and 47 having voted Aye, the amendment fails. We are now on consideration of Mr. Melvin's amendment to the minority report. Mr. Melvin's amendment would add, at line 26 on page 42—it would have the first part of the minority report from line 10 to 25, but then it would add in place of the language on lines 26 on through the rest, the following: "Before the close of filing for nominations in the first primary election after the Senate confirmation and at the primary election prior to each succeeding term of office, the name of the incumbent judge shall be placed on a contested, nonpartisan ballot if other candidates have filed for that office." Now, if there is no primary election contest, then the incumbent nevertheless has to run and the voters get a right to reject or approve him. And the last sentence—"In the event of rejection of a judge, another selection and nomination shall be made in like manner."

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I think I have an amendment.

**CHAIRMAN GRAYBILL:** Pardon?

**DELEGATE SCHILTZ:** I think I have an amendment, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Oh, you have an amendment. Do you have Schiltz's amendment? Does the clerk have Mr. Schiltz's amendment?

**CLERK HANSON:** No, sir.

**CHAIRMAN GRAYBILL:** Neither does the Chair, Mr. Schiltz.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 7, page 42, line 10, of the minority report Judiciary Committee Proposal by adding, after the word 'judges', the following: 'Thirty days after adjournment of the first legislative session—'"

**CHAIRMAN GRAYBILL:** Just a minute. Mr. Schiltz, we don't see where to amend. The word "judges" on what line? The word "judges" is not on—Oh, in other words, it's to go in as a sentence ahead of the rest, is that right?

**DELEGATE SCHILTZ:** Right.

**CHAIRMAN GRAYBILL:** Very well. Now we understand. Go ahead.

**CLERK HANSON:** "Thirty days after adjournment of the first legislative session following adoption of this article, the offices of all Supreme Court and District Court judges shall become vacant."

**CHAIRMAN GRAYBILL:** All right. The sense of Mr. Schiltz's amendment is to add a new sentence at the beginning of Section 7 of the minority report. The new sentence would read "Thirty days after adjournment of the first legislative session following the adoption of this article, the offices of all Supreme Court and District Court judges shall become vacant." And by further amending line 12, following the word "by" by adding the words "this declaration of vacancy."

**UNIDENTIFIED DELEGATE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Just a moment. The Chair presumes it to be the sense of your amendment, Mr. Schiltz, that if we're going to have the minority report, you want it to start with a clean slate 30 days after the legislative session, is that right?

**DELEGATE SCHILTZ:** That's precisely correct.

**CHAIRMAN GRAYBILL:** Very well. You may speak.

**DELEGATE SCHILTZ:** The purpose of this amendment is as stated by the Chair. It seems to me, and I think it's unassailable, that the only reason for changing from the elected Judiciary as we have it now is because there is something wrong with the system we have now. And if there's something wrong with the system we have now, it's inevitable that we've got some bad judges. And if we have some bad judges now, it's only fair that we start all over with a screening committee and start from the beginning. Now—I see no reason to lock into our present system, for the next 17 or 18 years, the potential of several bad judges. And I think this is a very simple thing to do. We start all over again. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** A point of order—are we on Mr. Melvin's amendment?

**CHAIRMAN GRAYBILL:** We are now considering Mr. Melvin's amendment, and Mr. [illegible] amendment to it by adding a sentence the [illegible] which is to start all over again 30 days after the next legislative session and have, if we adopt the minority report—then the Governor would nominate, and so forth, all the judges anew.

**DELEGATE AASHEIM:** Mr. Chairman. May I ask Mr. Melvin a question?

**CHAIRMAN GRAYBILL:** Mr. Melvin, will you yield?

**DELEGATE AASHEIM:** Mr. Melvin. You [illegible] in the primary election [illegible] no one contests the judge, he shall still run in the general election. Would he then have [illegible] contest? Would he have anyone contesting his position in the general election that he didn't have in the primary?

**DELEGATE MELVIN:** Yes, Mr. Aasheim. That was the intent, that if there was opposition in the primary election, then there would be two go from the primary to the general election, and then the winner would come out of the general election.

**DELEGATE AASHEIM:** Will he yield to another question? He didn't clarify the—

**CHAIRMAN GRAYBILL:** Mr. Aasheim, perhaps I can clear that up for you. What it says is that if anybody wants to run against this man, they can at any primary election. If nobody runs against him, so that he's unopposed, then he nevertheless has to go on the ballot, and the voters then vote whether to accept him or reject him.

**DELEGATE AASHEIM:** Mr. Chairman, will he yield to another question, then?

**CHAIRMAN GRAYBILL:** Mr. Melvin?

**DELEGATE MELVIN:** I yield

**DELEGATE AASHEIM:** Well, if he has no contest, how could the voters do anything but accept him?

**DELEGATE MELVIN:** If he has no contest in the general election, Mr. Aasheim—or in the primary election, then at the general election, the voters have a choice of approval or rejection.

**CHAIRMAN GRAYBILL:** And if the voters reject him, Mr. Aasheim, then the Governor would appoint somebody—and the next election, he'd have to run again? In other words, it creates a vacancy when he's rejected.

**DELEGATE AASHEIM:** Mr. Chairman, will he yield to another question?

**DELEGATE MELVIN:** I yield.

**DELEGATE AASHEIM:** Will the question on the ballot be, then, do you approve of Judge so and so's position?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE AASHEIM:** I see, thank you.

**CHAIRMAN GRAYBILL:** Is there further discussion of Mr. Schiltz's amendment? Mr. Schiltz—therefore, the issue will be on Mr. Schiltz's amendment, the purpose of which is to start all over again 30 days after the legislative session. "Thirty days after adjournment of the first legislative session following the adoption of this article, the offices of all the Supreme Court and District Court judges shall become vacant." And then one other minor amendment to make that makes sense in the next sentence. So many as are in favor of Mr. Schiltz's amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and the amendment fails. Now, we're on Mr. Melvin's proposal.

**DELEGATE KELLEHER:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Kelleher.

**DELEGATE KELLEHER:** I move my original motion.

**CHAIRMAN GRAYBILL:** Very well. Will the clerk read Mr. Kelleher's motion.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 7, page 42, lines 10 through 25, to read as follows: 'Section 7, Selection of judges. In all vacancies in the offices of Supreme Court justices and District Court judges caused by death, resignation, removal'—inserting 'or retirement', striking 'or failure of an incumbent judge to file a declaration of candidacy for a succeeding term of office', end of the strike—'the Governor of the state shall nominate'—and insert the words 'to serve during good behavior'". Are there any additional changes, Mr. Kelleher?

**DELEGATE KELLEHER:** No.

**CHAIRMAN GRAYBILL:** Very well. The sense of Mr. Kelleher's amendment is to change Section 7 to read: "In all vacancies in the offices of the Supreme Court justices and District Court judges caused by death, resignation, removal or retirement, the Governor of the state shall nominate, to serve during good behavior, a Supreme Court or District Court judge from nominees selected in the manner provided by law." Then, it goes on to say, "If the Governor fails to nominate within 30 days after receipt of the names" and so forth, and the rest of that is the same as the rest of Section 7 in the minority proposal. And it deletes everything after line 26 in the minority proposal. So, the upshot of it is that Mr. Kelleher's proposal would allow the Governor to nominate judges for the Supreme Court and District Court to serve during good behavior.

**DELEGATE KELLEHER:** May we have a roll call vote?

(Seconds rise)

**CHAIRMAN GRAYBILL:** Roll call vote having been called for, all those in favor of Mr. Kelleher's amendment, say Aye—or vote Aye—and all opposed, vote No.

Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, close the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Aye |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Absent |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Absent |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Aye |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Absent |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |

| | |
|---|---|
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Absent |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 13 delegates voting Aye, 83 voting No.

**CHAIRMAN GRAYBILL:** 83 delegates having voted No and only 13 Aye, that motion fails. We're back on Mr. Melvin's amendment to the majority report. The sense of Mr. Melvin's amendment is to say that the first paragraph of the minority report is accepted. The second paragraph, he substitutes the situation under which, at each primary election following appointment, the judge has to run, and if he does not have a contested election, he nevertheless has to put his name on the ballot and the voters get to decide whether to approve him or reject him. If he's rejected, then the Governor has to appoint anew.

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move that Section 7 of the Judicial Article appearing on page 42 be amended in the following particulars: On line 16, after the word "judge" inserting a period and striking all of the remaining words appearing in the first paragraph of Section 7.

**CHAIRMAN GRAYBILL:** Very well. Mr. Joyce moves an amendment to Section 7 of the minority report, which simply would allow the Governor to appoint without the commission. Now, Mr. Joyce, I'm going to rule you out of order, the reason being that your amendment does not touch Mr. Melvin's amendment, which is under consideration. If Mr. Melvin's amendment passes, then the minority report, including the language you want to strike, will be before the body and you can remake your motion.

**DELEGATE JOYCE:** (Inaudible) ruled out of order. (Laughter)

**CHAIRMAN GRAYBILL:** You've managed to have both happen to you now. (Laughter) My point simply is that that issue will be perfectly preserved for consideration after we've disposed of whether or not to adopt Mr. Melvin's amendment. Very well. The issue is on Mr. Melvin's amendment which, as I stated before, says—after line 26, strikes the minority report and puts in language which says that the appointed judge must run at each primary election thereafter and, if he is not opposed, he must nevertheless go on the ballot for approval or rejection. And if he's rejected, the Governor then reappoints. So many as shall—

Mr. Foster.

**DELEGATE FOSTER:** Roll call, Mr. Chairman.

(Seconds rise)

**CHAIRMAN GRAYBILL:** Very well. We'll use the voting machines. So many as shall favor Mr. Melvin's amendment, please vote Aye; and so many as shall oppose, please vote No.

Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote? Anyone else wish to vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, the ballot's closed.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Nay |

| | |
|---|---|
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Absent |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Absent |
| Hanson, R.S. | Aye |
| Hanson R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Aye |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Absent |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Absent |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |

**CLERK HANSON:** Mr. Chairman, 92 delegates voting Aye, 2 voting No.

**CHAIRMAN GRAYBILL:** 92 delegates having voted Aye, Mr. Melvin's amendment prevails and the minority report is now amended to include Section 7 down to line 26, as it appears on page 42, and from line 26 on, it includes Mr. Melvin's amendment.

Now, I promised to recognize Mr. Joyce. Mr. Aasheim, for what purpose do you rise?

**DELEGATE AASHEIM:** Mr. Chairman, I want to amend [illegible]

**CHAIRMAN GRAYBILL:** Well, you may, but I've got to let Mr. Joyce be first.

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. I move to amend Section 7 of the Judicial Article, on page [illegible], line 16, by inserting after the word "judges" a period and striking all of the words in paragraph form—from the word "from" in line 16 down to the word "[illegible]" in line [illegible].

**CHAIRMAN GRAYBILL:** Very well. Mr Joyce's amendment has the effect of eliminating the language in the minority report, as amended, which allows nomination in a manner provided by law and would authorize the commission system. In other words, it will retain only language which would let the Governor nominate, and after the Governor nominates, the provisions of Mr. Melvin's amendment would take over.

Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman. Getting to the heart of the matter on the commission system, may I submit to the delegates this consideration. In the first place, no matter how astute or how brilliant or how able or how fairly the Legislative Assembly may set up a commission to select these nominees, you cannot take the human element out of the situation. To illustrate—assume that the first row of this Convention is a commission that ultimately is selected in the manner prescribed by law, and there's a vacancy on the Supreme Court. And assume, for illustration purposes, that Mr. Davis and I are both vying for the job. Well, elementary, and the first thing that will happen is I will try and call up Cedor Aronow and see if he won't go for me, and Mr. Davis will call up Mr. Anderson and see if he won't go for him. And so you'll get interpolitics on this commission trying to see who's going to get the nod of the commission. Now the theory of the commission is that the commission's going to screen everybody and only select three people for the Governor to pick. Well, that's fine. The only trouble with commissions is they naturally take themselves seriously, and so of those three people that they pick, why, they always have one favorite. And if the Governor doesn't go for their favorite, then their nose gets out of joint and they figure that the Governor, in effect, made a political appointment. And so, after all—assuming that this commission then both recommends Mr. Davis and I and, say, Mr. Murray, who's also after the job, and the commission passes on the three of us and says, "Yes, all three of those would be great Supreme Court justices. They're able and talented and blah, blah, blah." Okay, what's going to happen then? It comes up to the Governor, and the Governor, at the current time, say, is a Democrat. Well, it seems to me that in the real world, it narrows down between Davis and I and that Murray is out. Not necessarily, but that's just the way the world is. Conversely, if we have a Repubican Governor and the three of us are vying the same way, it just follows as the night the day that Davis and I are out. But, of course, we have got an able judge. That's fine. But the Governor still has the right to finally pick him. Now, I submit that if we get away from the commission system in the Constitution, that any Governor can do like Governor Babcock does and, as I understood, Governor Anderson started to do, to have a select committee pass on people who are looking for vacancies. And as I understand, why Governor Anderson abandoned that system is just for that very reason, that the commission didn't approve of who he picked. They passed all these people—or they passed various people for a couple of jobs as though they were qualified and the Governor, notwithstanding, picked his man, which did not meet with the favor of the majority of the commission. So it seems to me that, ultimately, it comes down that on these vacancies—you've got to fill them; they're vacant—and that the Governor, having been elected by the people, you should assume that he's a responsible and honorable person and that he will pick who he thinks is the best man. And it doesn't mean that the Governor is corrupt because he picks one of his party over another party at all. It's simply that he believes the best judge will be one who has his political philosophy. And that's perfectly agreeable. President Nixon has just recently done that. And it seems to me that we're just beating around the bush by having a commission and we ought to leave it up to the discretion of whoever is Governor to pick who he wants to fill that vacancy. He can appoint any number of commissions, consult with the bar, consult with anybody he wants as to who he wants to select. And, of course, we are always limited as to who wants the job. And so it will, inevitably, narrow down to some people vying for the job. And I think we can trust the Governor to pick whom he thinks is the best man. Now, the quarrel—if there is a quarrel—with the present system is that the Governor has the right, under this system, to make an appointment overnight and that nobody knows about it. So if I could devise some system that would give—the Governor would have to give some reasonable notice before he made this appointment to see if there wouldn't be a great hullabaloo go up around the state, why, maybe that would be all right. But I don't see this committee—no matter how it's selected, and I'm not so much afraid that it'll be dominated by any particular interest; it could very well be dominated by so-called liberal interests, which would be just as bad—it seems to me that the committee system doesn't add anything at all to it and that the Governor, if we elect capable, honest, sincere governors, will make a choice of who he thinks will be a good judge on the bench of either the District or the Supreme Court.

**CHAIRMAN GRAYBILL:** Mr. Harper.

**DELEGATE HARPER:** Will Mr. Joyce yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** Yes, sir.

**DELEGATE HARPER:** Mr. Joyce, thanks for your comments on the Governor's nomination. Now, would you amplify your comments a little more to the second section of this amendment, because it also deletes the Senate's confirmation of the Governor's nomination. What's your word on that?

**DELEGATE JOYCE:** The only question on the Senate's confirmation of the Governor, it seems to me, is that under our system the Senate is not apt to be in session. And the question is whether or not the Senate should be called back to confirm the appointment. The only problem I have with that system is that the Montana Senate might adopt the unwritten law of the United States Senate which, in effect—they have what they call "senatorial courtesy"—so that, if the vacancy is in, say, Silver Bow County, the Senator from Silver Bow County then—under the senatorial courtesy system, he has it understood that if the nominee of the Governor is personally obnoxious to him for whatever reason, that all of his fellow senators will then turn down the confirmation. And that, of course, is the way that the United States Senators have developed for, in effect, getting their people—they make the appointments to the lower federal courts, particularly if their party happens to be in power. And so I really don't see requiring Senate confirmation as any particular safeguard, and it may allow into the realm, if I may use Mr. Kelleher's phrase, another vice where we would be as bad off as we are at the present time. And that's why I moved to strike the Senate confirmation as well.

**CHAIRMAN GRAYBILL:** Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman. I rise to resist Mr. Joyce's substitute motion, I think is what it is. I hope that everyone realizes that what this does, in effect, is completely put us back to where we were when we were about to vote on the majority proposal. I think it's worded a little better than the majority proposal, but it says exactly the same thing—mainly, that the Governor will appoint judges.

**CHAIRMAN GRAYBILL:** Mr. Harlow.

**DELEGATE HARLOW:** Mr. Chairman. I merely rise in opposition to the amendment. I love the way the lawyers, a little while ago, were praising the selective committee that was selected by the lawyers to help Governor Babcock select his judges. Now it's bad. Every 15 minutes the lawyers can change their minds and be on the other side of the question.

**CHAIRMAN GRAYBILL:** Very well. The question arises on Mr. Joyce's motion to amend Section 7 by eliminating the language in line 16 to 25, which has the effect of eliminating—

**UNIDENTIFIED DELEGATE:** Roll call vote.

**CHAIRMAN GRAYBILL:** Yeah, we'll have a roll call vote—which has the effect of eliminating the commission system and eliminating the Senate confirmation. We will have a roll call vote. So many as are in favor of his amendment, please vote Aye, and those opposed, please vote No.

Any delegate—have all the delegates voted?
(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?
(No response)

**CHAIRMAN GRAYBILL:** Please take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Aye |

| | |
|---|---|
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Absent |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Nay |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Aye |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Nay |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Absent |
| Mahoney | Absent |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Absent |
| Noble | Aye |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Nay |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Absent |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |

**CLERK HANSON:** Mr. Chairman, 26 delegates voting Aye, 69 voting No.

**CHAIRMAN GRAYBILL:** 69 having voted No and 26 having voted Aye, the amendment fails.

Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. Chairman. I move to amend Section 7, page 42, by deleting in line 11 and line 12, after the word "justices" on line

11, striking the words "and District Court judges". I'll just make one brief comment. I believe that the people are in a better position to select their District Court judges than they are the Supreme Court judges. And I believe that we should retain this in the elective process.

**CHAIRMAN GRAYBILL:** Mr. Aasheim's amendment strikes the words "and District Court judges" from lines 11 and 12 on page 42. It would have the effect of not allowing the Governor to appoint District Court judges. If it were passed, it seems to me it would require another sentence, Mr. Aasheim, where we would somehow tell how District Court judges would be handled. Do you want to add that now?

**DELEGATE AASHEIM:** No, Mr. Chairman. I would also amend line 15 and 16 to strike "or District Court judges" there. If this passes, then we will amend Section 7 somehow.

**CHAIRMAN GRAYBILL:** All right. In other words, this amendment would have the effect of eliminating the Governor's right to appoint District Court judges, and if it passed, we would than have to consider what to do about that.

Mr. Arness.

**DELEGATE ARNESS:** Mr. Chairman. Is a substitute motion in order?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE ARNESS:** I then move the following substitute motion as a substitute for all motions pending.

**CHAIRMAN GRAYBILL:** No, you can't —just make a substitute motion for Mr. Aasheim's —unless—are you going to make a substitute motion to eliminate Mr. Berg's motion that we adopt Section 7 of the minority report?

**DELEGATE ARNESS:** Yes, Mr. Chairman. I am.

**CHAIRMAN GRAYBILL:** You are, huh? Okay. (Laughter) Is it in writing?

**DELEGATE ARNESS:** Yes, it is.

**CHAIRMAN GRAYBILL:** Well, send it up to the Chair, please.

**DELEGATE ARNESS:** The motion—or the proposal would then read as follows.

**CHAIRMAN GRAYBILL:** Now, just a minute. Send it up to the Chair. Mr. Arness does not have the floor, but he'll have it again after I've read his amendment. Very well. Mr. Arness makes a substitute motion. May we read it from here?

**DELEGATE ARNESS:** Yes, please.

**CHAIRMAN GRAYBILL:** "The Legislature shall provide for the selection, pay and terms of judges."

Mr. Arness

**DELEGATE ARNESS:** Mr. Chairman. It seems to me that the difficulty that we've gotten into again is the one that we've been in for some time here. We're really legislating. And, the matters that are before us here—it's obvious from the detail into which we've descended that these are matters for the Legislature to deal with. This proposal would do that. We could have either election or selection, according to whatever was best for us and for the state, according to what the people decided. And if the Legislature made a mistake, which it seems to me that we are about to do here, they would at least be in a position thereafter—or their successors would be in a position thereafter—to correct it. I submit to you that the question of what the judges' election or selection should be is as minute and as statutory in detail as to what their pay should be. One of the district judges has—felt that the matter of pay was of sufficient importance that he should tell us, or ask us, to put something about that in the Constitution. We might as well put these fellows' pay, in terms of dollars and cents, in the Constitution as to put how they are going to be elected, who the committee is going to be, and the rest of it. It may be that the organized bar has failed and that it has not properly informed the electorate, during the times when judges have come up for election, about the qualities and the capabilities of the judges. I do not think that, because the bar has failed to properly inform the public, that we should now penalize the public by freezing forever into the Constitution our opinion of the failure of the bar to inform us. Now, that's what we're about to do. We can avoid that problem, and I think properly, and adhere to what we ought to be doing here by leaving this to the Legislature, where it should be done. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, the question is on Mr. Arness' amendment. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The amendment fails. Mr. Aasheim, do you want to change your amendment now? Want to restate your amendment?

**DELEGATE AASHEIM:** (Inaudible) restate?

**CHAIRMAN GRAYBILL:** Well, you want to delete the words "and District Court judges" in lines 11 and 12 and in lines 15 and 16. And I take it to be the sense of your motion that if that passes, then we would have to figure out, somehow, how to take care of the district judges later; is that right?

**DELEGATE AASHEIM:** That is correct.

**CHAIRMAN GRAYBILL:** Very well. All those—

Mr. Hanson.

**DELEGATE ROD HANSON:** Would Mr. Aasheim yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** (Inaudible)

**DELEGATE ROD HANSON:** Mags, do you propose later—and I know you're talking about proposing some more amendments if this one carries—would you propose anything that would prohibit somebody appointed to fill a vacancy from running for reelection in the District Courts if this carries?

**DELEGATE AASHEIM:** I would favor that proposal, yes, because I see the danger of this appointment as being a blank check for reelection.

**CHAIRMAN GRAYBILL:** All in favor of Mr. Aasheim's motion to delete the words "and District Court judges", so that the Governor could not appoint District Court judges, all in favor of that, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and it's defeated. Now, the Chair would like to call to the attention of the body the second of my guidelines for debate this morning: "Depend on the committees; follow the majority or the minority; do not become amateur draftsmen in areas you have not studied." Now, we're considering the minority report. Mr. Melvin's amendment was adopted, so it controls after line 26 and Section 7 from line 10 to 25 is in effect.

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, in all—I would like to ask Mr. Melvin if he would yield to a question.

**DELEGATE MELVIN:** I yield.

**DELEGATE SCHILTZ:** In all fairness to Mr. Melvin, he pointed this out to me and asked me to inquire about it. If you would look at lines 13—all of line 13 and a portion of 14—it says, "or failure of an incumbent judge to file a declaration of candidacy for a succeeding term of office". It impresses me, Mr. Melvin, that there's a possibility in this procedure where an incumbent judge would have somebody file against him and then the incumbent judge would decide that he was not going to be a candidate, in which case the opponent would not have been screened by the committee; either that or, if he must be screened by the committee, he would not have the opportunity to run, as your provision provides. Do you have an answer to that?

**DELEGATE MELVIN:** Yes, I have, Mr. Schiltz. For those that were in attendance at the Romney hearings concerning the Judicial Article, you will recall that this is the place where I deviated from the minority report. Because it just seems to me that, if we're consistent in wanting to provide the voters the maximum options, that we should consider all vacancies, for instance, in the offices of Supreme Court judges and District Court judges—and then skip that and go down to "the Governor of the state shall nominate". This is then covering appointments. The election procedure is left up to the voters at that point. Does that answer your question?

**CHAIRMAN GRAYBILL:** Do I—go ahead, Mr. Schiltz.

**DELEGATE SCHILTZ:** Well, it really doesn't answer my question, and I'm not enamored enough with this proposal to take on the drafting job. But I think something ought to be done to protect the fellow who files and then has the incumbent withdraw. And if there's any great magic in having everybody go through a screening committee, it seems to me that in the event that the incumbent withdraws, somebody ought to screen this fellow who wants to run against him.

**CHAIRMAN GRAYBILL:** Mr. Melvin, do you have an amendment to propose that would cure that?

**DELEGATE MELVIN:** Yes, I have one prepared, Mr. Chairman, if I may sign it.

**CHAIRMAN GRAYBILL:** Very well. The sense of Mr. Melvin's amendment is to delete, on lines 12, 13 and 14, the clause "caused by death, resignation, removal, retirement or failure of an incumbent judge to file a declaration of candidacy for a succeeding term of office". In other words, he would strike those words from the minority proposal, so that it would read: "In all vacancies in the office of Supreme Court justices and District Court judges, the Governor of the state shall nominate a Supreme Court or District Court judge from nominees selected", et cetera. This has the effect of changing Section 7 into a clause that deals with vacancies.

Mr. Melvin.

**DELEGATE MELVIN:** Mr. Chairman, I think that you've covered it quite thoroughly. It has the effect of simply covering the vacancies as we know them—as the common vacancies. And I think it answers Mr. Schiltz's question, that if somebody wants to file for the office, he can, without going through this other procedure that regular appointees must undergo. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Melvin, I have a question. Would you yield?

**DELEGATE MELVIN:** Yes.

**DELEGATE HOLLAND:** As I indicated, there is much about your plan that I find desirous. Is it the sense of your amendment that—if—Let's say, that Mr. Joyce is the incumbent judge. He decides not to run for reelection. Will, then, anybody who wants to file be able to file and then go through the elective process? In other words, this would apply just to the vacancies—resignations or death or things like that?

**DELEGATE MELVIN:** That's correct.

**DELEGATE HOLLAND:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** I am not sure that the amendment as proposed by Mr. Melvin would fit the bill. However, I am very much in favor of the amendment in the sense in which he says, "I think this is a reasonable compromise for both sides." In the event of a vacancy caused by other than a man desiring not to run for office, as I understand Mr. Melvin's proposal, he would say, rather than the Governor filling the appointment by, just on his own, picking some lawyer to be the judge, rather than that, the commission would then recommend to the Governor. The Governor would appoint from the selections of the commission; this would be confirmed by the Senate; and then the man, thereafter, would be subject to election. I would submit that this matter be passed upon until the whole Judiciary Committee can go over Section 7 and make sure that it says exactly what Mr. Melvin wishes it to say and then resubmit it to the floor.

**CHAIRMAN GRAYBILL:** Mr. Holland, that part of your sentence is out of order. The Chair will consider Mr. Melvin's present amendment. And before we close on Section 7, we'll recess for lunch, but I want to get as far along as we can on Section 7, because if we can get over Section 7, we might get Judiciary out of the way today. So the issue now is on Mr. Melvin's motion to strike the language "caused by the death, resignation, removal, retirement, or the failure of an incumbent judge to file." And it has the effect of saying that in all vacancies in the office of Supreme Court or District Court judges, the Governor of the state shall nominate from nominees selected in the manner provided by law, et cetera. All in favor of Mr. Melvin's amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** It's been adopted.

Mr. Eskildsen.

Mr. Swanberg, for what purpose do you rise?

**DELEGATE SWANBERG:** I was wondering, Mr. President, if it would be possible to revive my prior suggestion, or if it would be timely at this time?

**CHAIRMAN GRAYBILL:** Revive your plan?

**DELEGATE SWANBERG:** Yes.

**CHAIRMAN GRAYBILL:** Yeah. We might just as well vote on your plan before lunch, Mr. Swanberg? (Inaudible)

**DELEGATE SWANBERG:** All right. The reason I asked that, Mr. President, was because we've already voted in the negative twice on the election of the District Court judges. I submit, however, and will so submit again, that this is not where the problem lies. I think the public at large is pretty well satisfied with the method of selection of our District Court judges. The problem does lie in the Supreme Court. We have before us a proposal that would call for the appointment of both bodies, and I would like to submit, as a substitute to this, a proposal which I fear may not receive very much support here because it's too simple. The minority proposal as presented is very grandly complicated. And for that reason, I suppose, it will receive the support. However, I've written it out, and my proposal would simply state that the District Court judges shall be elected by the electors of the judicial districts in the manner provided by law. And the Supreme Court justices shall be selected by a commission, which shall consist of the district judges, in the manner provided by law. I have heard much talk this morning, and I've gathered from most of these talks, that there was a considerable distrust of this commission. I, too, share that distrust. The proposal which we are submitting here eliminates that insofar as it can be eliminated. You would have a body selected by the people at large, the entire membership of the district judges in the state. They would not be subject to—or be subject to very little—control by any pressure group or any person. And I submit that they would be qualified, by their obvious occupation, to be fully competent to select the membership of the Supreme Court judges. These selections would be for a term of six years and be reviewed from time to time as they came up. And I so move, Mr. President.

**CHAIRMAN GRAYBILL:** Very well. Mr. Swanberg's amendment has the effect of picking up the language from what you have on the desk before you, so that it would say that the state shall be divided in judicial districts, in each of which there shall be elected by the electors one or more district judges for the District Court, whose term shall be four years. And then the second part would be his second paragraph there. "The justices of the Supreme Court shall be appointed by a commission, which shall consist of the judges of the District Court of the State of Montana. The term of office for judges of the Supreme Court, except as provided, shall be six years." Well, the point of Mr. Swanberg's proposal is to have District Court judges elected and the Supreme Court judges appointed by a commission consisting of the District Court judges. So many as shall be in favor of Mr. Swanberg's proposal, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** Very well, it's defeated.

Now, Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, I move we recess until 2 o'clock p.m. this afternoon.

**CHAIRMAN GRAYBILL:** The motion is to recess until 2 o'clock p.m. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** So ordered.

(Convention recessed at 12:58 p.m.—reconvened at 2:00 p.m.)

**CHAIRMAN GRAYBILL:** The committee will be in session. Ladies and gentlemen of the committee, placed upon your desk before you is a—we have rewritten Section 7 as it is amended to date, with the exception of the part below the stars at the bottom. The way the two paragraphs at the top read is the current status of Section 7, as amended. It includes both Mr. Melvin's amendments and part of the minority report. We are proceeding now to debate Section 7, as amended.

Mr. Melvin, I understand you have an addition.

**DELEGATE MELVIN:** Mr. Chairman, I move an amendment to Section 7, as indicated on the bottom of the sheets that have been passed out, which reads as follows: "If an incumbent judge does not run, there shall be a contested, nonpartisan election for the office."

**CHAIRMAN GRAYBILL:** Very well. Mr. Melvin has moved an amendment to the existing amended language that we're discussing of Section 7. That amendment is found on that sheet in your page—on your desks at the bottom of the page. It has the effect of saying that, in the event an incumbent judge ceases to run, then there is an election; otherwise, in all the other events, even if a judge is rejected at an election, we go back through the selection of judge process whereby the Governor appoints, based on the commission.

Mr. Melvin.

**DELEGATE MELVIN:** Mr. Chairman, the language in the amendment was suggested in response to Mr. Holland's question this morning to clarify a possible question with regard to the election. It has been suggested, Mr. Chairman and fellow delegates, that this particular sentence might better be inserted immediately after the title, Selection of judges. I think that this would be a matter for Style and Drafting. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Is there further discussion of the proposed amendment?

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I would move to strike the word "nonpartisan", both from the added amendment and about seven lines up where it says "contested, nonpartisan ballot".

Mr. Chairman.

**CHAIRMAN GRAYBILL:** I understand it to be the sense of your amendment to strike the word "nonpartisan" from the last line. We're working now from the sheet that has been put on your desk—from the last line—and also to strike the word "nonpartisan" about 10 lines from the bottom at the end of the line. Is that correct?

**DELEGATE SCHILTZ:** That's correct.

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I don't have a—well, I do have a strong feeling about it—what I mean to say is, I don't think that it's been thoroughly thought of. As the present Constitution provides, it says nothing about whether elections shall be partisan or nonpartisan. It's a matter of statute that we now have nonpartisan election for judges, and whether he says nonpartisan or not, as the statutes now stand, it will be a nonpartisan election, and I think it ought to be left that way against the day when the Legislature might want to change it. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Schiltz's amendment to strike the word "nonpartisan" from the constitutional part of the article. So many as shall be in favor of Mr. Schiltz's amendment, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted. So, if on the sheet you have, you'll strike "nonpartisan" at the bottom line and strike it at the end of the line 10 lines from the bottom. Now, the issue is on Mr. Melvin's amendment to add the last line, "If an incumbent judge does not run, there shall be a contested election for the office." Is there discussion? (No response) So many as shall be in favor of Mr. Melvin's amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted Very well. Are there other amendments to Section 7, as amended, as you have it before you?

Mr. Joyce.

**DELEGATE JOYCE:** May I ask Delegate Melvin a question? Will he yield?

**CHAIRMAN GRAYBILL:** Mr. Melvin?

**DELEGATE MELVIN:** I yield.

**DELEGATE JOYCE:** What happens, Mr. Melvin, if the incumbent judge does decide to run?

**DELEGATE MELVIN:** I think, Mr. Joyce, in the second paragraph it says "Before the close of filings for nomination in the first primary election after Senate confirmation" and so forth—I think that this covers that eventuality.

**CHAIRMAN GRAYBILL:** It also covers, Mr. Joyce, "and at every primary election prior to each succeeding term of office". So, in other words, at every primary election when his term is up, the incumbent has to put his name on the ballot and [illegible] with him in case he has to stand alone to be approved or rejected, under the second paragraph.

Mr. Joyce.

**DELEGATE JOYCE:** Will Delegate Melvin yield to another question?

**CHAIRMAN GRAYBILL:** Mr. Melvin?

**DELEGATE MELVIN:** I yield

**DELEGATE JOYCE:** My problem is that the first paragraph talks about when there are vacancies in the office, and it seems—the second paragraph seems to tie into vacancies—well—and so I don't see that it is covered when the incumbent judge does decide to run.

**CHAIRMAN GRAYBILL:** Mr. Joyce, if the Chair may help you, the second clause "and at the primary election prior to each succeeding term of office, the name of the incumbent judge shall be placed on a contested ballot". Is that satisfactory to you?

Is there other discussion of the Section 7, as amended, before you on the desks?

Mr. Swanberg.

**DELEGATE SWANBERG:** Would Delegate Melvin yield to a question?

**DELEGATE MELVIN:** I yield.

**DELEGATE SWANBERG:** Perhaps you could summarize for us, Mason, the difference between this proposal and the present Constitution. In what way is our present situation, under our present Constitution, different from what you propose?

**DELEGATE MELVIN:** Actually, the proposal before you would accommodate times when there are vacancies in the office of District Court judges or Supreme Court judges by putting into effect the nomination by the committee, then the appointment by the Governor, confirmation by the Senate. The present system, of course, has been pretty well covered this morning. Now, in addition, I think that we should note in the last sentence of the second paragraph. "In the event of rejection of a judge, another selection and nomination shall be made in like manner." In other words, if a judge is running for approval or rejection at the general election, if he is rejected, then the nomination procedure would go into effect and then he'd have to run at the next primary election coming up. Does that answer your question, Mr. Swanberg?

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Well, I must have been out late last night, because I'm not quite able to understand why we start filling vacancies before we decide how the judges are to be elected. Now, is the election determined—beginning line 26 on 42. Will Mr. Berg yield to that question?

**CHAIRMAN GRAYBILL:** Mr. Berg?

**DELEGATE AASHEIM:** Where do we talk about election of judges?

**DELEGATE BERG:** The proposal is—combines appointments and elections. If a judge is—if a vacancy occurs, for example, by death or resignation or retirement, then—and the Governor is required to make an appointment to fill that vacancy, in that event a system of, call it merit selection, is used. Now, any judge who is in office will be required to be retained in office for approval or rejection. At any election he must stand a competitive election if anyone wants to file against him. Now, that's clearly expressed in paragraph two of this Section 7 as you have it before you. There is the amendment that Mr. Melvin is proposing which fills in a possible gap, and that provides that if an incumbent judge does not run, there shall nevertheless be a contested election for his office, so that in the event of rejection of a judge or in the event the judge does not seek to succeed himself, then, nevertheless, there is a contested election, and in the event that he does not care to succeed himself, the merit selection feature—the appointment feature—would not obtain. Do I answer your question?

**DELEGATE AASHEIM:** Mr. President, I still feel that we're putting the cart before the horse here, and I think you have explained it to me what you have done, but I think the important process is the primary election of judges; and then if there's a vacancy, then it should be—then it should follow.

**DELEGATE BERG:** The only way I can answer you is to say that these two paragraphs take care of both problems completely.

**CHAIRMAN GRAYBILL:** Mr. Aasheim, as was said awhile ago, whether or not this last sentence should be first or whether it should be last is a matter that Style and Drafting could decide on, but the last sentence does take care of it.

Mr. Swanberg.

**DELEGATE SWANBERG:** Would Delegate Berg yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Berg?

**DELEGATE BERG:** I yield.

**DELEGATE SWANBERG:** Mr. Berg, I don't wish to seem dense about this, but I fail to find anyplace in here where there's a merit system mentioned.

**DELEGATE BERG:** Well, in all vacancies—if you'll read the first paragraph—in all vacancies in the offices of Supreme Court justices and District Court judges, the Governor of the state shall nominate a Supreme Court or District Court judge from nominees selected in the manner provided by law. Now, that means that he must make his selection from nominees in the manner provided by law. It is contemplated that the Legislature will create a committee to select and name those nominees. That's where merit selection comes in.

**DELEGATE SWANBERG:** But it's not so stated in our Constitution?

**DELEGATE BERG:** No, because it was not stated for the very reason that if we locked it into the Constitution and the composition of the committee needed changing, it's difficult to do it by amendment. If you leave it to the Legislature and it needs changing, it can readily be done year by year.

**DELEGATE SWANBERG:** Under the situation that we have in the Constitution, though, if the Legislature decided not to form this commission, then we'd have the same situation we have now, do we not, where the Governor would simply appoint the judge?

**DELEGATE BERG:** Yes, but I think this is a pretty clear direction to the Legislature of the intent of this Convention.

**CHAIRMAN GRAYBILL:** Mr. Swanberg, do you have any further questions?

Very well, question arises on Section 7, as amended. Section 7, as amended, now includes part of the minority report on page 42, and it's best seen by looking at the sheet which is placed on your desk. The first paragraph, under Selection of judges: "In all vacancies in the offices of Supreme Court justices and District Court judges, the Governor of the state shall nominate a Supreme Court or District Court judge from nominees selected in the manner provided by law. If the Governor fails to nominate within 30 days after receipt of the names of the nominees, the Chief Justice or acting Chief Justice shall make the nomination. Each nomination shall be confirmed by the Senate, but a nomination made while the Senate is not assembled shall be effective as an appointment until the end of the next session of the Senate. If the nomination is not confirmed by the Senate, the office shall be vacant and another selection and nomination shall be made." That paragraph is from the minority report with one clause deleted. Then, Mr. Melvin's first amendment was: "Before the close of filings for nominations in the first primary election after Senate confirmation and at the primary election prior to each succeeding term of office, the name of the incumbent judge shall be placed on a contested ballot if other candidates have filed for election to that office. If there is no primary election contest for the office, the name of the incumbent judge shall be nevertheless placed on a ballot in the general election, allowing the voters of the state or district the choice of his approval or rejection. In the event of rejection of a judge, another selection and nomination shall be made in like manner." Namely, the Governor would appoint up in the first paragraph. Now, we've also added Mr. Melvin's third amendment: "If an incumbent judge does not run, there shall be a contested election for the office." The vote on this, I trust, will be by roll call. The ballot is open. So many as favor the minority-Melvin proposal, as amended, to Section 7 of the Judicial Article, please vote Aye. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, the ballot's closed. Please tally the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Absent |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Absent |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Absent |
| Delaney | Aye |
| Driscoll | Absent |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Absent |
| Etchart | Aye |
| Felt | Absent |
| Foster | Aye |
| Furlong | Absent |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Absent |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Absent |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 88 delegates voting Aye, no delegates voting No.

**CHAIRMAN GRAYBILL:** 88 delegates having voted Aye, the Section 7 is adopted. Now the clerk will again read Section 6, which we passed.

**CLERK HANSON:** "Section 6. Terms and pay of judges. Justices of the Supreme Court, District Court judges and other judges shall be paid as provided by law, but their salary shall not be diminished during their term of office. Terms of office for Supreme Court justices shall be six years. Terms of office for District Court judges shall be four years. Terms of office for other judges shall be provided by law." Mr. Chairman, Section 6.

**CHAIRMAN GRAYBILL:** Mr. Berg

**DELEGATE BERG:** Mr. Chairman, I believe I have already moved and explained this section. I'll have no more comments.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, I would like to propose an amendment to paragraph 6 to the effect of increasing the term of Supreme Court justice from six years to eight and District judges from four years to six.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Garlington, I understand you want to increase the Supreme Court from six to eight and the District Court from Four to six, is that right?

**DELEGATE GARLINGTON:** That is correct.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Ladies and gentlemen of the Convention, as you review Section 7, which we have just voted upon here, you realize that we have really not made any very great change or improvement in the situation of those who might aspire to serve in judicial office, and I get concerned again with the fact that it really is difficult to get people to give up their private practice, forsake all of their connections, in order to ascend to the bench, and then face the uncertainties of a political confrontation thereafter. In order to determine whether I was right about this, I got to looking through the book on the Judiciary, Number 14, which you all were given, and especially I was looking at the tables which appear on page 193 and 199 in that volume. From this, I find that Montana is really at the bottom of the barrel in the way that it treats its judges, and I feel that this information ought to be called to the attention of the delegates in order to complete our handling of this Judicial Article. For example, in the table number 16 on page 192 and 193, it appears that there are 17 out of the 50 states who have Supreme Court justice terms limited to six years. All 33 of the other states have them from 8 years up to 15 years or for life. So we are one of 17 who have the six-year limited term. Turning to the District Court, I find that 13 out of the 50 states have trial court judge terms fixed at the minimum of four years, and all 37 have longer terms, running from 6 to 15 years and on up to life. Then, I thought to myself, well, maybe we pay our judges well enough that it is worthwhile to give them only a short term, so looking at table 17 on page 199, I checked the pay provided for the judges against the terms that matched the terms in Montana, and I find in conclusion that the only state in the nation that has a lesser salary than we have for our Supreme Court justices on the same term as we have is South Dakota, and it either—well, anyway, it's $500 below Montana. So the result is that Montana, at the present time, has a combination of the shortest term and the lowest salary, except in one instance, of all the states in the nation for its Supreme Court justices. And I think this is something that we ought consider, because if we ask these men to give up their private practice and go into judicial service, we either ought to make it attractive to them in some respect by the salary they receive or by the term of office they have in which to establish their judicial competence. For this reason, I suggest that if we increase the terms of both District Court justices and Supreme Court judges by two years, we will still be on the under half of the American average standard and we will take one step—will not cost anybody anything to see to it that those who aspire to judicial service will have a fair term within which to serve without the necessity of preparing to finance for their political campaigns.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Will the gentleman, Mr. Garlington, yield, please?

**DELEGATE GARLINGTON:** I yield.

**DELEGATE SCHILTZ:** Mr. Garlington, do you think it's necessary here—at least I would like the sense of this committee to know when these terms would start if your amendment were approved.

**DELEGATE GARLINGTON:** Well, Mr.

Schiltz, I haven't given any consideration to that. I assume that in our transition from the old to the new, assuming that we are cleared by the voters, that the new terms would commence as the old terms expire.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. Chairman, I rise in support of Mr. Garlington's amendment. I believe that if we are going to ask these men to run, and as he has pointed out, this business of giving up their law practice, that if we extend the terms to six years for the District judges and eight years for the Supreme Court justices, that this would not be unreasonable. I would have one small comment on the pay for judges. I understand they draw $20,500 a year, and this seems to be—they seem to think this is a very small amount. I would like to say that, as a school teacher, I would like to go through the pain of adjusting to a $20,500-a-year salary.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I'll be brief. I, too, rise in support of Mr. Garlington's motion. I feel that what our real endeavor here is, is to make an effort such as we can to improve the course of justice in Montana, and I think the one great stride that may be made in that effort is to seek better judges, to try to get at least the best of our bar interested and induced to become judges. One way to do that is, of course, to extend their term and to extend it so that it is at least equal or on par with the surrounding states and generally with the states within the Union.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I support Delegate Garlington's motion for the reason that I think it will improve the quality of justice. I think the longer the term, the more stable the term, the more stable the performance; the chance of external influence is lessened; so, consequently, I support that in the hope that in this manner we will improve the quality of justice in Montana.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman, I've come to the conclusion the best way to get action in the Judicial Article is to resist the other attorneys, so I'm going to do so. I suggest that now we've gone from direct election to merit selection, at least in part. An integral part of merit selection is the review—that is, that—the man running uncontested, even if he doesn't have an opponent, is going to come up here and the voters are going to vote whether he's doing a good job or not, and I would suspect that a good deal of our elections in the future are going to be that way. Now, lowering these terms means that the public won't even be able to say to these judges that you're not doing a good job except every eight years and every six years in terms of the District Court, six years; in terms of the Supreme Court, eight years. And I suggest that as long as we've gone to this system, and we might as well be good sports because this is what the majority evidently wants, we're going to have this system, that we should at least call these men to the mark as often as we have been doing it—call the Supreme Court up every six years and the District Court every four years.

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. Garlington's amendment. He would amend Section 6 on page 42 on lines 5 and lines 7 to provide the Supreme Court judges with eight-year terms and District Court judges six-year terms. So many as shall be—

Mr. Heliker.

**DELEGATE HELIKER:** Roll call.

**CHAIRMAN GRAYBILL:** Roll call? Very well, so many—We'll use the voting machine. So many as shall be in favor of the amendment, vote Aye; and so many as shall be opposed will vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, close the ballot. Please take the ballot.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Absent |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |

| | |
|---|---|
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Absent |
| Champoux | Nay |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Absent |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Absent |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Aye |
| Noble | Aye |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Absent |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Absent |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK SMITH:** Mr. President, 46 voting Aye, 46 voting Nay.

**CHAIRMAN GRAYBILL:** 46 having voted on each side of the proposition, the proposition fails. We are now debating Section 6 as it appears in the minority report. Very well, members of the committee, you now have before you on the motion of Mr. Berg, that when this committee does arise and report after having under consideration Section 6, it recommend the same be adopted.

**DELEGATE ROMNEY:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** Do I not have an amendment up there?

**CHAIRMAN GRAYBILL:** I beg your pardon. [illegible] sir. Do you want it read?

**DELEGATE ROMNEY:** Please.

**CHAIRMAN GRAYBILL:** Very well.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 6, page 42, line 3, of the Judiciary Committee minority report by adding the following language: 'No justice of the Supreme Court nor judge of the District Court shall accept or receive any compensation, fee, allowance, mileage, perquisite, or—'

**CHAIRMAN GRAYBILL:** "Emolument."

**CLERK SMITH:** '—emolument for or on account of his office in any form whatever except as provided by law.' Signed: Romney."

**CHAIRMAN GRAYBILL:** The sense of Mr. Romney's amendment would be to add, at the end of the sentence that ends on line 3, page 42, the following sentence: "No justice of the Supreme Court nor judge of the District Court shall accept or receive any compensation, fee, allowance, mileage, perquisite or emolument for or on account of his office in any form whatever except as provided by law."

Mr. Romney.

**DELEGATE ROMNEY:** (Inaudible)

**CHAIRMAN GRAYBILL:** We can't hear you, Mr. Romney. Hold it a little closer.

**DELEGATE ROMNEY:** It is practically the same as Section 30 in the contemporary Constitution. The only difference is in the last line, where it reads "except" in the old Constitution—in the present Constitution where it reads "except the salary provided by law". My amendment is, 'except as provided by law". The purpose of this amendment, of course, is perfectly plain. It's to forestall any additional perquisites or emoluments accruing to a member of the Judiciary for things other than his salary. The reason I did not include the word "salary" is because I conceive that it is included in "except as provided by law", because the salary is provided by law by the Legislature. So are items other than the salary, which might include, for example, mileage. Now, it's correct that a man should—a judge who must travel from Hamilton to Thompson Falls or from Kalispell to Miles City or wherever it might be should be compensated for the money that he expends for mileage and his hotel and things like that. That could and would be taken care of by the Legislature, except as provided by law, in the same way that the Legislature cares for similar contingencies of other employees of the state. For example, the members of this Convention receive per diem in addition to their salaries and they receive a certain amount of mileage. So do legislators. Employees of the various departments of the state likewise are compensated for their travel, and that could all be handled by the Legislature. Now, I think that's the way it should be. I don't see any reason why the Judiciary should be treated in a different manner than the other employees of the people of the State of Montana. If you do otherwise, it is tantamount to an increase in salary, and the Legislature has already taken care of the salary increase, so I just want the Judiciary to be in the same standing as the rest of the employees of the State of Montana. I thank you.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. Chairman, would Mr. Romney yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Romney, will you yield?

**DELEGATE ROMNEY:** Certainly.

**DELEGATE LOENDORF:** Mr. Romney, your amendment was only read, but I am wondering if it's really different from the second paragraph in Section 8, which reads: "No Supreme Court justice or District Court judge shall solicit or receive any compensation on account of his office in any form whatever except salary and actual necessary travel expenses as provided by law."

**DELEGATE ROMNEY:** That's quite true, but it's in the wrong place, I think.

**CHAIRMAN GRAYBILL:** Where is that, Mr. Loendorf?

**DELEGATE LOENDORF:** Mr. President, that's in the second paragraph of Section 8.

**CHAIRMAN GRAYBILL:** Very well, Mr. Romney, we're coming to that. Do you want to amend it here, or do you want to—

**DELEGATE ROMNEY:** Well, Mr. Chairman, I submit that this is where the rest of the qualifications are spelled out. I don't care, as long as it gets in.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, the committee, both in the Judiciary Committee and I think in both the majority and the minority, gave serious consideration to this problem. And we used the term "actual necessary travel expense" for very good reason, and that is that we found that District judges in various communities have an entirely different expense than they do in others. Some travel more, some have more expense because motel rates and hotel rates in some communities are higher, and we felt that we should try to equalize this out as nearly as we could, and we therefore specifically used and agreed upon the language "and actual, necessary travel expense". Now, I would call—as long as we are into Section 8, I would call your attention to the next paragraph, which relates to this—to similar limitations on judges, and that is this: " Except as otherwise provided in this Constitution, no Supreme Court justice or District Court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party." Now, it is the feeling of at least the minority, and I believe the majority, too, joins with us in that we did not want judges to receive any fee, any salary, any compensation from any other employment except as a judge. This is different than the Constitution, and this is why we inserted it. Now, it seemed to us that these two paragraphs related more to limitations and qualifications, and we therefore included them under Section 8 rather than under the salary and term.

**CHAIRMAN GRAYBILL:** Mr. Romney.

**DELEGATE ROMNEY:** It is satisfactory to me, and I withdraw my amendment.

**CHAIRMAN GRAYBILL:** All right, Mr. Romney withdraws his amendment. Very well, members of the committee, you have now before you, on the motion—I should perhaps mention that Mr. Kelleher had an amendment to eliminate the terms of all three of the officers, all three of those things, but he's not here to put his motion, so I'm not going to put it. Members of the committee, you now have before you the motion of the Chairman of the committee or the subchairman of the Committee on Judiciary that when this committee does arise and report, after having under consideration Section 6, that it recommend the same be adopted. All in favor, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** 6 is adopted. Will the clerk please read Section 8.

**CLERK SMITH:** "Section 8. Qualifications and limitations of judges. No person shall be eligible to the offices of justice of the Supreme Court or judge of the District Court unless he or she shall have been admitted to the practice of law in Montana for at least five years prior to the date of appointment or election, is a citizen of the United States, and has resided in the State of Montana two years immediately before taking office. Qualifications and methods of selection of judges of other courts shall be provided by law. No Supreme Court justice or District Court judge shall solicit or recieve any compensation on account of his office, in any form whatever, except salary and actual necessary travel expenses as provided by law. Except as otherwise provided in this Constitution, no Supreme Court justice or District Court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party. Filing for another elective public office results in forfeiture of judicial position. A district judge must reside in his district during his term of office." Section 8, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 8 of the minority report, as it appears on page 43 and 44, that it approve and give it—do pass.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** We have changed the 1889 Constitution in some particulars with regards to the qualifications of judges. First of all, we eliminated the age requirement, but, secondly, we required five years practice of law for either a District Court judge or a Supreme Court judge, and by that we mean that he must be admitted to the practice of law in the State of Montana for at least five years before he's qualified to hold that office. It was the belief of the committee, and I'm sure I'm speaking now on behalf of both majority and minority, that it takes experience in the courtroom, it takes experience in the actual practice in Montana in order to understand the procedures that we use, and that it would be harmful to the serving out of justice in our courts if we had people on the bench who were not intimately familiar not only with Montana substantive law, but more especially with procedural law, and we felt very strongly that one of the most significant qualifications would be actual trial practice in court. We did not feel, however, that we should specify that in particular, but we feel that these are the kind of qualifications that do lend to the making of good judges. We did not make any qualifications insofar as inferior court judges were concerned but [illegible] that entirely to the Legislature. I have already discussed the paragraphs 2 and 3. The Constitution does not now have a provision which prohibits a justice of the Supreme Court or judge of the District Court from filing for any other office during his term of office. This was inserted in the minority report to prevent what we think is political ambition and using the courts as stepping-stones in fulfillment of a political ambition. We provided that the district judge must reside within his district during his term of office. That is exactly the same as the old—as the 1889 Constitution.

**CHAIRMAN GRAYBILL:** Mr. Berg, the Chair is in doubt. The other day there was a proposal here that the Judiciary Committee wanted to add, on page 44 at the end of the article—language about if a judicial officer absented himself from the state for 60 consecutive days. Do you want that in or not?

**DELEGATE BERG:** (Inaudible) propose that as an amendment, because that is, I think, Section 37 of the existing Constitution, and I recall Judge Fall, in particular, before our committee emphasizing the importance of that. We would like it included.

**CHAIRMAN GRAYBILL:** You want that [illegible]

**DELEGATE BERG:** Yes, and I so move.

**CHAIRMAN GRAYBILL:** All right. First of all, then, on page 44, at the top of the line where it says "one, for his term of office"—that's the end of Section 8—the committee wishes to add this language; and you have had this language on your desk for some days; it may be lost by now. "Any judicial officer who may absent himself from the state for more than 60 consecutive days shall be deemed to have forfeited his office." All in favor of the Judiciary Committee's motion that that be added, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** It's adopted. Now, Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman, we have another amendment that the committee agreed upon yesterday afternoon.

**CHAIRMAN GRAYBILL:** Mr. Aronow, would you like the Chair to read—or the clerk to read that amendment?

**DELEGATE ARONOW:** Yes, I would, except there is one error that has to be added to this amendment, and that's to strike line—at the bottom of page 43—line 30 and line 1 at the top of page 44, because the amendment takes care of that.

**CHAIRMAN GRAYBILL:** Very well, will the clerk please read the amendment?

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 8, page 44, line—"

**CHAIRMAN GRAYBILL:** "Line 1."

**CLERK SMITH:** "—line 1, by adding the following language to that section: 'All judges, except justices of the Supreme Court, who shall reside within the state, shall respectively reside during their term of office in the district, county, township, precinct, city or town in which they may be elected or appointed.' Signed: Aronow."

**CHAIRMAN GRAYBILL:** Very well, Mr. Aronow's amendment has the effect of changing the language there. We strike out the phrase: "A district judge may reside in his district during his term of office—or, must reside in his district during a term of office"—and put it in in this more comprehensive language, that all of the judges, except the Supreme Court judges, who reside in the state, shall respectively reside during the term of office in the district, county, and so forth, from which they may be elected or appointed.

Mr. Aronow.

**DELEGATE ARONOW:** I move the adoption of this amendment. And this is nothing new;

it's been in the 1889 Constitution; it's always been the law in Montana. We've boiled it down, shortened it, and submit it herewith.

**CHAIRMAN GRAYBILL:** Purpose, Mr. Berg?

**DELEGATE BERG:** Mr. Chairman, I simply want to point out that this amendment does cover, for example, Police Court judges and justices of the peace or any other inferior court judge, and it was the thinking of our committee that if a Police Court judge is either elected or, in the case of a commission-management form of government, appointed, he ought at least to live within the area where the taxpayers are paying his salary.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. Aronow's amendment to the effect that judges, except Supreme Court judges, shall reside within the state and the district in which they serve. All in favor of Mr. Aronow's amendment, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed?
(No response)

**CHAIRMAN GRAYBILL:** It's adopted.
Mr. Blaylock.

**DELEGATE BLAYLOCK:** Will Mr. Berg yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Berg?

**DELEGATE BERG:** (Inaudible)

**DELEGATE BLAYLOCK:** Mr. Berg, just the second paragraph up from the bottom of page 43, at line 28, it says: "Filing for another elective public office results in forfeiture of judicial position." Now, it says "public office" there. I just want to raise a question. If a district judge were to file for a Supreme Court position, would he forfeit his district judge position?

**DELEGATE BERG:** He would, under this provision, yes.

**CHAIRMAN GRAYBILL:** (Inaudible)

**DELEGATE ARONOW:** [Would] Mr. Berg yield?

**DELEGATE BERG:** Yes.

**DELEGATE ARONOW:** Suppose the Chief Justice, as an example, term expired and he didn't even file. I'll just make it real easy. So one of the associate justices, whose term has not expired, filed for the position—

**DELEGATE BERG:** He would forfeit his office and take his chances in the election.

**DELEGATE ARONOW:** Thank you

**CHAIRMAN GRAYBILL:** Members of the committee, you have before you, on the motion of Mr. Berg, that when this committee does arise and report, after having under consideration Section 8, it recommend the same be adopted. All in favor of that motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Section 8 is adopted. Will the clerk please read Section 9.

**CLERK SMITH:** "Section 9, Disqualification of judges. The Legislature shall provide for disqualification of judges at any one or all of the inferior, trial and appellate court levels." Section 9, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz, do you have Section 9?

**DELEGATE SCHILTZ:** I don't have it, but I'll take a shot at it.

**CHAIRMAN GRAYBILL:** Mr. Berg will take it, Mr. Schiltz.
Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section 9, that it repeal the same. Now, yesterday, at our so-called ad hoc committee meeting, we discussed this at length, particularly as it related to the Supreme Court, and we had the benefit of, in our committee—in this so-called ad hoc committee—members who had been in discussion with the Supreme Court and the possible effect it might have on the operation of the Supreme Court, and it was felt that it should be left entirely to the Legislature and not referred to in the Constitution; that if you permit unlimited, at least, disqualifications in the Supreme Court, you might very well disrupt or almost completely dismantle the court at times. So it was suggested that, by the Supreme Court itself, as I understood it, that if there were disqualifications of Supreme Court members, it should be at least for cause. And because of these problems, the committee that met yesterday, which was composed of both minority and majority lawyers, felt that this should be deleted, and I understood Mr. Schiltz would move it, but I'm happy to do it if he doesn't.

**CHAIRMAN GRAYBILL:** Very well. Now, the sense—for the information of the body, the sense of Mr. Berg's motion is to delete Section 9. In other words, strike it out, do away with it. Is there debate? (No response) Very well. Members of the committee, you have before you the motion of Mr. Berg that when this committee does arise and report, after having had under consideration Section 9, that it be deleted. So many as are in favor of that motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** Section 9 is deleted. Will the clerk read Section 10.

**CLERK SMITH:** "Section 10, Removal and discipline of judges and lawyers. There is created a Judicial Standards Commission consisting of three judges, selected by the district judges, of which not more than one can be a member of the Supreme Court, two members of the Montana Bar, and two citizens who do not hold any public office of the State of Montana or any office of a political party, appointed by the Governor. Each vacancy on the commission shall be filled in the same manner as the original appointment was made, and the appointee shall serve for the remainder of the term vacated. No act of the commission is valid unless concurred in by a majority of its members. The commission shall select one of its members to serve as Chairman. Its proceedings shall be confidential. The commission shall have the power to investigate, including power to subpoena witnesses and documents, upon complaint by any citizen or on its own motion, charges which could be the basis for retirement, censure or removal of any justice or judge or for the discipline, censure, suspension or disbarment of any practicing lawyer in the State of Montana. Upon finding charges to be well founded, the commission shall file a formal complaint before the Supreme Court. The Supreme Court shall hear such complaint and, if it be sustained, may retire, censure or remove any justice or judge or discipline, censure, or suspend or disbar any practicing lawyer. If the complaint be against a justice, the court shall call in a district judge as provided in Section 3 of this article." Section 10, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman. Well, the clerk has an amendment to Section 10 which, in effect, has deleted and completely rewritten it.

**CHAIRMAN GRAYBILL:** I'll have the clerk please read the amendment proposed by Mr. Aronow's Section 10.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 10, page 44, lines 5 through 30, and page 45, lines 1 and 2, of the Judicial Committee proposal by striking the entire section and inserting in lieu thereof the following language: 'Section 10, Removal and discipline of judges. Subsection 1: The Legislature shall create a Judicial Standards Commission and provide for the appointment of three district judges, one attorney, and one citizen who is neither a judge nor an attorney. Subsection 2: The commission shall investigate complaints, subpoena witnesses and documents, and make rules implementing this section and providing for confidentiality of proceedings. Subsection 3: Upon recommendation of the commission, the Supreme Court may: (a) retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or (b) censure, suspend or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, or habitual intemperance.' Signed: Aronow."

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman, I move that when this committee does arise to report, that it adopt this amendment. The reason we determined to rewrite this: there were some defects, we felt, in the Section 10 of the minority proposal. It was a little too broad in scope. It attempted to cover the discipline of lawyers, which was not the intent of this article, and the discipline of lawyers and the standards for their conduct is handled by the Supreme Court. This is a committee which we created in the majority part of the committee report, modeled somewhat after New Mexico. It's been revised; some things have been taken out of California. It's shortened, and in effect, this article provides for three district judges, one lawyer and one layman, a committee of five, to investigate and look into any complaints that are made or any information that comes to the attention of the commission that a judge, either because of old age, other disability, is not attending to duties properly and provide for his retirement or removal from office. The present time, the only procedure provided in the Constitution is impeachment, which is a cumbersome and difficult method. We feel that this will help upgrade and strengthen the Judiciary and take care of those situations where, perhaps because of injuries or other disability, a judge may not realize that he's incapacitated, and this can be handled quietly in many instances and without undue embarrassment to anyone or the system. If the judge or justice refuses to cooperate and wants a hearing, there's a form provided. We didn't feel that, as long as the Supreme Court was to finally pass on this matter, that any member of the Supreme Court should be on the committee to investigate the charges. Thank you.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman, I rise to make a substitute motion.

**CHAIRMAN GRAYBILL:** All right, what is your substitute motion?

**DELEGATE McNEIL:** The language has basically been spread upon the desks, although it was drafted in the form of an amendment to the section as proposed by the minority committee report. My substitute motion will read exactly as Section 10, as read by Delegate Aronow, excepting in the title, following the word "judges", insert the following: "architects—"

**CHAIRMAN GRAYBILL:** Now, just a minute, Mr. McNeil. Does the Chair understand that you are now intending—rather than what you said—you're now intending to amend Mr. Aronow's amendment?

**DELEGATE McNEIL:** No, sir. Since an amendment to the second amendment, I believe, would be out of order, I am offering a substitute motion.

**CHAIRMAN GRAYBILL:** No, an amendment to amendment is not out of order, but my point is, do you want to graft it on Mr. Aronow's or the minority report?

**DELEGATE McNEIL:** At this time, Mr. Chairman, I would—if amendment is in order, I will amend Delegate Aronow's amendment.

**CHAIRMAN GRAYBILL:** All right, will the clerk read the substance of Mr. McNeil's amendment—not what it amends, but just the substance of it. Just the first paragraph.

**CLERK SMITH:** "—architects, bankers, priests, governors, legislators, certified public accountants, insurance agents, doctors, dentists, teachers, ministers, professors, pilots, educators, businessmen, engineers, social service workers, journalists, veterinarians, and all other professions."

**CHAIRMAN GRAYBILL:** All right, now. The sense of Mr. McNeil's motion is to amend the title of Mr. Aronow's proposal here to include all of the groups that you heard mentioned. I take it that he would then have this Judicial Standards Commission, consisting of three district judges, an attorney and one citizen who is not a judge nor an attorney, investigate complaints, and upon recommendation, he'd have the Supreme Court do away with all of the incompetent people in these different capacities. Is that correct, Mr. McNeil?

**DELEGATE McNEIL:** Mr. Chairman, that is substantially correct. I trust that the delegates will recognize the list, since it was taken from the membership of this Convention, with the governors and legislators thrown in. I would also have included housewives and ranchers had I known how they could have been removed. (Laughter) I did not intend this to be humorous, although, rather obviously, it is. The legal profession has been singled out for censure. I do not believe this belongs in the Constitution. If each of you will think of your own profession, I think you can find a small percentage, perhaps the same percentage as that of the legal profession, that needs cleaning up and attention. I made this motion to draw your attention to that fact and to request that you give serious consideration to removing this kind of thing from the Constitution. For that reason, I will withdraw my motion and make the following substitute motion. I move to delete Section 10 in its entirety, as a substitute motion.

**CHAIRMAN GRAYBILL:** Very well, the motion is to delete Section 10.

**DELEGATE McNEIL:** Mr. Chairman, I will speak just for one minute on this subject.

**CHAIRMAN GRAYBILL:** All right.

**DELEGATE McNEIL:** Our present Constitution, and I trust the format which all of the delegates are contemplating for the one which we are drafting now, contemplates three equal, distinct, separate branches of government. We have adopted an Executive Article which does not have any appointive commission overseeing our Executive officers. We have adopted a Legislative Article which does not have any appointive commission overseeing our legislators. I submit that the Judiciary of this state, which is as fine as there is anywhere, does not need an appointive commission overseeing it. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue—

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, in response to Mr. McNeil's motion, I resist it, partially because and mostly because we have had two or three judges in the State of Montana, who, themselves, were not aware that they were over the hill, and the judges who testified at our committee themselves, speaking for the entire judges' association, said that they were for something like this. They catch the burden of a judge who is too old and has possibly become senile—once in a while we have one who's alcoholic—and then they catch that extra burden of work and the Judiciary also is criticized considerably when that situation obtains. For that reason, I resist the motion.

**CHAIRMAN GRAYBILL:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President, Mr. McNeil put in his first motion, which he then withdrew, and he included teachers and I would like to make one point in regard to that, that—

**CHAIRMAN GRAYBILL:** All right, now, it's out of order unless it has to do—

**DELEGATE BLAYLOCK:** It does—

**CHAIRMAN GRAYBILL:** —with deleting the paragraph—

**DELEGATE BLAYLOCK:** —it does, Mr. President.

**CHAIRMAN GRAYBILL:** Pardon?

**DELEGATE BLAYLOCK:** It does have something to do with it—that if, in removing people, that teachers must go before a board if they are going to remove their teacher's certificate, which, in effect, would be the same as disbarring an attorney or removing a judge—and we don't even have, on such a committee as that, a teacher sitting there as this present amendment which they want to delete, where we have judges and lawyers sitting, and I would resist Mr. McNeil's motion to delete this. I think we need this in our Constitution in case that we may very well have to judge a judge.

**CHAIRMAN GRAYBILL:** Mr. Melvin.

**DELEGATE MELVIN:** Mr. Chairman, I rise in support of Delegate Aronow's proposal and resist Mr. McNeil's proposal to eliminate that particular sentence, and I would like to quote briefly from a comment that was made in one of the letters that an attorney wrote to the committee: "Recall the case of judge in blank and blank and blank counties some time ago. He refused to hold jury trials, and the Governor and the Supreme Court were powerless to do anything about it." Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on Mr. McNeil's substitute motion to delete Section 10 in its entirety. All in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The motion fails.

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. President, I have sensed that a lot of laymen in this Convention feel that nothing is done, practically, in regard to lawyers, and before they vote on Mr. Aronow's amendment, which I support, I wonder if Mr. Davis would yield to a question.

**CHAIRMAN GRAYBILL:** Mr. Davis?

**DELEGATE DAVIS:** I'll yield.

**DELEGATE HABEDANK:** Mr. Davis, you are a member of the Supreme Court Commission on Practice. Would you explain what this does?

**DELEGATE DAVIS:** Well, I was hoping the amendment would pass. It's a little difficult to explain without taking a little bit of time. The Supreme Court Commission on Practice is made up of eight members of the bar, who are elected in each of eight districts. The junior judge—junior by length of service, not age, because our 80-year-old judge happens to be the junior judge in our eight-county district now for this purpose—holds the election. They submit, as I understand it, the two highest candidates to the Supreme Court, the ones getting the most votes. The Supreme Court then nominates or appoints one of them to the Commission on Practice. At the present time there are eight attorneys on the commission. Mr. Ask is on it from Roundup, I'm on it from southwestern Montana. There's one from Great Falls, Missoula, Glasgow and Sidney, and Mr. Hooks from Townsend. Complaints against any attorney in the State of Montana are referred to this commission. Local grievance committees are appointed in each district, in each county. They are then referred to the local grievance committee. That committee makes a recommendation. They investigate; they see whether it's a dilatory matter, whether it's a breach of ethics, or whether it's a violation of the law. Then it's referred back to the commission on practice. The commission on practice then has to make a determination of what further proceedings should be held; whether there should be a public censure, a private censure; whether they should just get ahold of the fellow and tell him to get his work done; or whether it's a case for disbarment or removal or suspension. In the eight years I've been on this, we've done each and every one of those things. It's one of the most unpopular type jobs you can get. It's nonpaying. And, I'm hopeful that you'll adopt the minority and eliminate the commission on practice, but then the Supreme Court will have to go back through and figure out some other way to handle the same thing. Does that answer your question?

**CHAIRMAN GRAYBILL:** Very well. The issue is on Mr. McNeil's—
Mr. Choate.

**DELEGATE CHOATE:** Mr. Chairman, I think we all realize that a provision of this kind is something that will seldom be used. It's something that will not very often be invoked against the judge; but I think it's essential that something along this line be done, and I believe that Mr. Aronow's amendment to Section 10 is a sensible, reasonable approach to it, and I support it.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I simply want to rise and support Mr. Aronow's amendment. We've reviewed this, as I say, in this ad hoc committee. I've discussed it with members of the minority and members of the majority. We all think that it does what we want it to do. We are particularly interested in seeing to it that District judges and Supreme Court justices have some protection, not only of themselves in the case of senility or alcoholism, but frequently charges are made against judges which, of course, they are almost powerless to answer. If there is a commission before whom those charges can be filed, the judge has an opportunity to defend himself. This also is a factor and the use of which can be made of this commission.

**CHAIRMAN GRAYBILL:** The issue is on Mr. McNeil's substitute motion to delete Section 10 in its entirety. All in favor say—

**DELEGATE ARONOW:** That motion was voted down.

**CHAIRMAN GRAYBILL:** Oh, that's defeated.

**DELEGATE ARONOW:** Yes.

**CHAIRMAN GRAYBILL:** I beg your pardon.

**DELEGATE ARONOW:** It's on my motion.

**CHAIRMAN GRAYBILL:** Right. I beg your pardon. Well, we would have defeated it twice, Mr. Aronow. (Laughter)
Mr. Aasheim.

**DELEGATE AASHEIM:** Would Mr. Aronow yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Aronow?

**DELEGATE ARONOW:** I yield, Mr. Aasheim.

**DELEGATE AASHEIM:** Now, your commission here is going to be set up to judge judges, and you have there three judges on that commission. Now, why do you select judges to judge judges?

**DELEGATE ARONOW:** Mr. Aasheim, the reason—this is not the group to judge. This is the group to investigate and look into the matter and make recommendations, and we felt, also, that some of these things can be handled quietly without the need of going to a hearing before the Supreme Court—that in the instance where a judge is getting old and lost part of his marbles, if I may use that expression, maybe a group of judges [illegible] go to him and persuade him to voluntarily retire. Or, if he has habitual alcoholism, maybe they can get him to go get boiled out and on the wagon again. And if that doesn't work, then, of course, they bring to the attention of the Supreme Court the results of the investigation. Or perhaps a judge has been injured in an accident, has had a serious illness which is apt to become permanent in nature, maybe that they can then convince him that he should step down voluntarily without going to the need of trial and all that type of thing.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. President, I recognize your deep concern about this, and I think you've thoroughly studied it, and I think that this is the root of most of our problem or problems. I think very few of us recognize the position of an attorney when he is placed before a judge, no matter what his position is, whether he's a trial attorney or just any attorney in probate. And, sometimes I have found out about a judge after he has passed away—how rotten he was—and an attorney would tell me what he had done to make himself unpopular with the attorney, but the attorney, during the time of this man's term of office, would not dare to speak out. And I think our whole judicial system is in danger because of this position we have placed our judges in now. It looks to me like they're in here for life, because attorneys don't dare to speak out against them and the public doesn't know. So, I say, why should a judge judge a judge. I would rather see more attorneys on this commission, myself. I know we have a good deal of criticism of attorneys, but I think in this area I would surely respect their judgment, but maybe you have reasons why you think a judge would do a better job than an attorney.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** In response to Mr. Aasheim, I think what our fear is, Mr. Aasheim, is that an attorney on this commission who probably thought he got a bad decision—we all think about that every time we lose one—could bring charges against that judge, and we'd rather avoid that and let the judges do their own judging of each other.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** I might also explain to Mr. Aasheim that we've never had a commission of this type to which a practicing lawyer could go. The only way that you can get rid of a judge was through impeachment or wait until the next election and try to get somebody to run against him. This is a procedure where a letter can be written or a charge filed with this commission and ask them to look into it, investigate it, and, if the facts were found to be true, then to take such action as might deem appropriate.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** I rise for the purpose of making an amendment, then. I respect your judgment, Mr. Aronow, and I realize the predicament of the attorneys in relation to the judges, and I wonder, then, if we shouldn't give a little more consideration to a lay person. Let him stand as a sort of a liaison between the judges and the attorneys. So I move to amend, to strike in Mr. Aronow's motion, the word "three" to "two"; and in lieu of "one" before citizens, put "two". Then we'll have "two citizens, two judges and one attorney". And I move the amendment.

**CHAIRMAN GRAYBILL:** Very well. Mr. Aasheim's amendment has the effect of reducing the number of judges on the commission from three to two and the number of citizens on the commission from one to two, so that it would be two judges, one attorney and two citizens, neither a judge nor an attorney. Is there further discussion? (No response) All in favor of Mr. Aasheim's amendment say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted. Are there further amendments? (No response) Members of the committee, you have before you for your consideration, upon the motion of Mr. Aronow, when the committee does arise and report, after having had under consideration Section 10, as amended, it recommend that the same be adopted. All in favor, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** The Ayes have it, and it's adopted. Will the clerk please read 11.

**CLERK SMITH:** "Section 11. Clerk of the Supreme Court. The Chief Justice shall appoint a clerk of the Supreme Court, who shall hold office at the pleasure of the Supreme Court. The salary and qualifications shall be fixed by law, and the duties of the office shall be prescribed by the Supreme Court." Section 11, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I move that when this committee, after having consideration of Section 11, does rise to report, that it approve and recommend passage of Section 11.
Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** This particular section would appoint the clerk of the Supreme Court. His term would be for whatever the Supreme Court—so long as he served at their pleasure; his salaries would be fixed by law; and his duties prescribed by the Supreme Court. Now, this is in keeping, generally, with the idea that if the Supreme Court is to exercise any general supervisory control of the other courts, the clerk—the office of the clerk of the Supreme Court will admirably serve in that respect. It seemed to us that an appointed clerk might be, in the long run, a better facility for that purpose. So far as the minority is concerned, we like the idea of the appointment. The majority has always insisted on election. We think that this question of election, and probably term of office, should be left here on this Convention floor, much like the selection of the judges. Have at it.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman, I have an amendment which I have proposed. It was dated February 26, 1972, and I think it's on all the delegates' desk. This is in the hands of the clerk and consists of the first paragraph of the two-part amendment I sent up to the Chair. Would the clerk read the proposed amendment.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 11 of the Judiciary Committee minority proposal, being page 45, lines 3, 4 and 5, by deleting it in its entirety and inserting in lieu thereof the following material: 'There shall be a clerk of the Supreme Court, who shall hold his office for the term of six years. He shall be elected by the electors at large of the state, and his compensation shall be fixed by law and his duties prescribed by law and by the rules of the Supreme Court.' Signed: Holland."

**DELEGATE HOLLAND:** Mr. Chairman, this is substantially the same as—I think identical with, the proposed majority amendment. The purpose of this amendment is to make the clerk of the Supreme Court elective. The minority report, which has been—the delegates have chosen to enroll section by section, provides for the election of the clerks of the District Courts. This merely—this doesn't change that regard. It merely provides for—that the article will be consistent and that the clerk of the Supreme Court will be elected along with the clerks of the District Court. Now, the other day I spoke about the election of the State Auditor and the State Treasurer and the State Superintendent of Schools. I feel the same way about the clerk of the Supreme Court. He should be elected, too, in accordance with what we've done. I would urge this Convention to keep these offices elective so that the people can have a choice and so that we can get better service.

**CHAIRMAN GRAYBILL:** The sense of Mr. Holland's amendment is to make the clerk of the Supreme Court elective. The sense of Section 11, as proposed in the minority report, is to leave that up to the Supreme Court—who would hold office at the pleasure of the Supreme Court.
Mr. Brown.

**DELEGATE BROWN:** Mr. President, I offer a substitute motion. I now move to delete all of Section 11.
Mr. President.

**CHAIRMAN GRAYBILL:** Mr. Brown.

**DELEGATE BROWN:** It is my opinion that this is a legislative matter. The more offices we lock into the Constitution—we do not give the people more freedom to elect their public officials, we lock future generations into the officials we think they should have. Therefore, to keep flexibility, this type of legislation should be kept out of the Constitution.

**CHAIRMAN GRAYBILL:** Very well. The sense of Mr. Brown's amendment—substitute—is to delete Section 11 in its entirety. We'll discuss that.

Mr. Toole.

**DELEGATE TOOLE:** Mr. Chairman, I think this Convention should get rid of at least one elective office. I think this is an antiquated anachronism. I think it's an imposition on the court, and I support Mr. Brown and oppose Mr. Holland.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on Mr. Brown's substitute motion to delete Section 11. I take it you want a roll call vote.

Mrs. Warden, did you have—

**DELEGATE WARDEN:** Mr. President, I just wanted to rise in support of Mr. Brown's motion. I think, as far as we lay people are concerned, that this is something that is very remote from us.

**CHAIRMAN GRAYBILL:** Will the clerk reset the machine? Very well. The issue now arises on Mr. Brown's motion. We'll have a roll call vote. So many as shall be in favor of deleting Section 11 in its entirety, please vote Aye on the voting machines; so many as are opposed, vote No.

Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** The ballot is closed. Will you please tally the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Nay |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Absent |
| Aronow | Nay |
| [illegible] | Nay |
| Ask | Absent |
| Babcock | Aye |
| Barnard | Absent |
| Bates | Nay |
| B[illegible]her | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Absent |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Absent |
| Campbell | Absent |
| Cate | Absent |
| Champoux | Absent |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Nay |
| Davis | Absent |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Absent |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Nay |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Nay |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Absent |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Nay |
| Murray | Nay |
| Noble | Aye |

| | |
|---|---|
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Aye |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Aye |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Aye |

**CLERK SMITH:** Mr. President, 57 voting Aye, 31 voting No.

**CHAIRMAN GRAYBILL:** 57 delegates having voted Aye to delete Section 11, Section 11 is deleted. Will the clerk please read Section 12.

**CLERK SMITH:** "Section 12, Clerk of the District Court. There shall be a clerk of each judicial District Court in each county, who shall be elected by the voters therein and who may appoint such deputies as provided by law. The term of office, qualifications, and compensation of the District Court. There shall be a clerk of each Judiby law. The duties of the clerk and deputies shall be prescribed by the District Court judge and as provided by law." Section 12, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Holland—or, I mean, Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I move that, after this committee has had under consideration Section 12 on page 45 of the minority report, that when it does rise to report, it recommend the deletion of paragraphs 1 and paragraph 2 and the retention of paragraph 3 in the minority report.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Again we come to something of a controversial matter with regard to the clerk of the court. The Local Government Committee also deals with the clerk of the court, as it does with all county officers, and it appears, at least to the minority, that the clerk of the court should be continued and kept in the Local Government Article just as all other county officers are. There is in our mind a good reason to suppose that in many counties the functions of the clerk of the court can be combined with other offices at considerable savings. We believe that, by simply providing for the duties as provided by law and as prescribed by the judge, that is all that is really necessary in the Judicial Article. We believe that flexibility and perhaps economy can be achieved more readily if the clerk of the court is left with the local government.

**CHAIRMAN GRAYBILL:** The Chair understands it to be the sense of Mr. Berg's motion that the first two paragraphs of Section 12, which is lines 9 to 15 on page 45, will be deleted under his motion, and the last sentence on lines 16 and 17 would be retained, which says: "The duties of the clerk and deputies shall be prescribed by the District Court judge and as provided by law."

**DELEGATE BERG:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** I should like to amend that so that it reads "The duties of the clerk of the District Court—" deleting the word "deputies" and adding "clerk of the District Court".

**CHAIRMAN GRAYBILL:** Very well, we'll delete the words "and deputies". The sentence now in his motion shall read: "The duties of the clerk of the District Court shall be prescribed by the District Court judge and as provided by law."

Mr. Brown.

**DELEGATE BROWN:** Mr. President, I again move a substitute motion that Section 12 be deleted, for the same reasons that I previously argued and for the additional reason this section as written was in direct conflict with the Local Government report, and by leaving the last para-

[illegible] in here we by implication, say there must be such an office, and I think it's going to be a problem for Style and Drafting, and county offices should not be in the Constitution.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** I rise to support Mr. Brown's motion that this be deleted, for the county clerk. I feel if we would take the state Supreme Court clerk—we delete him. I feel we should do this likewise in the county. I feel this is a move—I oppose the move to delete the Supreme Court clerk, and I think if we leave these in as elected people, I think we're going to have a problem. Thank you.

**CHAIRMAN GRAYBILL:** Mrs. Blend.

**DELEGATE BLEND:** As a member of the Local Government Committee, I would like to point out that the county officials that are elected are kept in a form of government that is to be extended for a four-year period, then put on the ballot and voted by the people for acceptance of another form of government, which could delete the county officers or retain them.

**CHAIRMAN GRAYBILL:** Very well. The motion is on the substitute motion of Mr. Brown to delete Section 12 in its entirety.

Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President, would Mr. Brown yield to a question, please?

**CHAIRMAN GRAYBILL:** Mr. Brown?

**DELEGATE BROWN:** I will yield.

**DELEGATE ROD HANSON:** Mr. Brown, how is this handled in Local Government?

**DELEGATE BROWN:** Local Government—I'm not on that committee and I hate to speak on it. It's my impression from reading their report that this will be one alternate form of government, to have your county offices—county attorney, clerk of court, county treasurer, so on. Then, at county option, they may eliminate this type of office and go into another form of government.

**DELEGATE ROD HANSON:** I misunderstood. I thought you said that it was handled as a county office under the Local Government report. It isn't then?

**DELEGATE BROWN:** Yes, yes it is. I'll defer to Mr. Ask.

**DELEGATE ROD HANSON:** Okay.

**CHAIRMAN GRAYBILL:** Mr. Hanson, Mrs. Blend just explained that. Now, perhaps you didn't get it, but in the Local Government report—proposal—of course, we haven't adopted that yet—they establish what's known as a form of government which retains the existing county officers for a period of four years, after which there shall be an election, and then whether or not they were retained would depend on what the public did at the election.

**DELEGATE ROD HANSON:** This was my question. Is the clerk of court then contained in that list of county officers in Local Government that—

**CHAIRMAN GRAYBILL:** The clerk, is contained in the list of local government officers which they put in the form of government that will be retained for four years and then put on the ballot. That's the present majority proposal on Local Government. Is there further discussion? (No response) If not, the issue is on Mr. Brown's substitute motion to delete Section 12 in its entirety. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Chair is in doubt. We'll use the voting machines without a roll call. All in favor, say Aye; all opposed, vote No on the voting machines.

Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, 58 delegates having voted Aye, 29 No, the Section 12 is deleted in its entirety. Will the clerk please read Section 13.

**CLERK SMITH:** "Section 13, District attorneys. There shall be elected district attorneys whose jurisdictional area, qualifications, term of office, salaries and duties shall be provided by law." Section 13, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I move that when this committee, after having consideration of Section 13 of the minority report, does arise and report, that it recommend the passage of the same.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** In this article, we have referred to what we now know as county attorneys as district attorneys, and we did that with this in mind: that, in time, we contemplate that perhaps the jurisdictional area of the prosecuting attorney will be enlarged. It may comprise more than one county; it may comprise more than two counties and even part of a third in some parts of the state. And, therefore, we left the jurisdictional area of the district attorney to the Legislature. Again, we were looking towards flexibility even in this office. Now, we understand that at the present time and for the near future, at least, a district attorney will, in fact, still be the county attorney and his jurisdictional area will be the county in which he is elected, but we have tried to make this flexible enough to accommodate any changes, for example, that local government may make. Now, I imagine that Mr. Brown will consider that the district attorney, like the clerks of the court, are really not appropriate in the Judicial Article and move to delete them. I would caution you, however, with regard to the county or district attorney, that he really is the chief prosecuting officer in the area that he represents—that he is, actually, an officer of the court and, therefore, in my mind, properly belongs in the Judicial Article. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. Chairman, I move to delete Section 13 in its entirety.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Joyce's motion is to delete Section 13 in its entirety.

Mr. Joyce.

**DELEGATE JOYCE:** It seems to me this is—Mr. Brown's point is perfectly applicable to the district attorneys. This is a matter that should be left to the Legislature. Surely the Legislature is never going to abolish district attorneys. They are going to have to have attorneys to prosecute crimes in the name of the state. And let me point out to the Convention as what happens by putting the clerks of the court and the county attorneys in the Judicial Article in the 1889 Convention. There came—they were elected for two years for years and years and years—all the county officials were. So they had a constitutional amendment, and they only amended the one article, though, where—the Local Government Article—and raised it to four. For years then the county attorney was stuck with the two-year term. Everyone in the courthouse had a four-year term. Similarly, the clerk of the court was stuck the same way. Then, under the old Constitution, where they had the raise and you couldn't get a raise in salary during your term, why, they'd raise—they'd move it beyond where most of the county officials were to raise the salary just before their election, so the county attorney—or all the officers that took office then at the next election, [would] get the raise, but the clerk of the court and the clerk of the Supreme Court, being out of phase with them, were always two years behind, and this shows the futility and the silliness of writing this stuff into the Constitution and that the Legislature ought to be able to provide for district attorneys or whatever methods of attorneys they need to prosecute, so that instead of doing the clerks of court and the county attorneys a favor in the 1889 Constitution, it seems to me over the years they cost the holders of those respective offices thousands of dollars, willy-nilly and unwittingly.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Would Mr. Ask yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Ask?

**DELEGATE ASK:** Yes, I'll yield.

**DELEGATE BERG:** Did you include county attorneys in the local county government as an enumerated office?

**DELEGATE ASK:** Yes, the county attorneys are listed similar to the clerks of the District Court. They are one of the alternative forms of government.

**CHAIRMAN GRAYBILL:** Very well. The question arises on Mr. Joyce's motion to delete Section 13 in its entirety. All in favor of that motion, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it. Now, ladies and gentlemen, there are some additional sections proposed. Mr. Wilson, you proposed an additional section. I think the language is on the desks of the delegates. May we read your proposal, Mr. Wilson?

**DELEGATE WILSON:** (Inaudible)

**CHAIRMAN GRAYBILL:** Very well, the clerk will read Mr. Wilson's proposal.

**CLERK SMITH:** "Mr. Chairman. I move to amend the Judiciary Article, being page 45, by adding a new section to read as follows: 'Section 14. Probate attorney. The district judge shall appoint in each county or judicial district a probate attorney who has been admitted to practice law in Montana. The probate attorney shall assist county or judicial district citizens in probating or administering estates. The Legislature shall set the salary of the probate attorney.' Signed: Wilson."

**DELEGATE WILSON:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** I move that when this committee does arise, after having under consideration Section 14, an amendment to the Judicial Article, that they report in favor of same. Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Wilson.

**DELEGATE WILSON:** I received more people's complaints in this particular field than any other area what would—that was to be considered in the Constitution. They felt that there was such a great variation in the handling of different estates in the different areas of the state and the abuses that was occurring in some areas warranted some consideration of this type of a proposal. The fees allowed attorneys in probating estates are described in the following statute: "The executor and the administrator shall be allowed all necessary expenses in the care, management and settlement of the estate, including a reasonable fee paid to attorneys for conducting the necessary proceedings and for conducting necessary actions in courts or incurred therefor, the amount of which attorney fees shall be in all cases in the absence of agreement fixed and determined by the court having jurisdiction in the settlement of the estate, and for his services such fees as provided in this chapter." Revised Codes of Montana, 1947. This statute allows a reasonable fee to be paid attorneys for probate, which is fixed by the court. The fee an attorney charges for probating an estate is usually based on the minimum fee schedule for the Montana Bar Association. The minimum fee for probate set out in this schedule is a fee equal to one and a half times the statutory fee allowed to executors and administrators—will be charged in all probate proceedings. Where there is a change of attorneys during the course of administration, but one fee will be allowed. Thus, probate fees of attorneys are one and a half the fee allowed for executors of estates. The statute setting fees of executors and administrators states: "Compensation of executors and administrators, when no compensation is provided by the will or the executor renounces all claims thereto, he must be allowed commissions upon the amount of the estate accounted for as follows: For the first $1,000 at the rate of 7 percent; for all above that sum, not exceeding $10,000, at the rate of 5 percent; for all above $10,000, not exceeding $20,000, at the rate of 4 percent; and for all above $20,000 at the rate of 2 percent." If there be no more than one executor, only one commission must be allowed. The same commissions must be allowed to administrators. In all such cases, further allowances may be made as the court or judge may deem just and reasonable for any extraordinary services. The total amount of such extra allowance must not exceed the total amount of commission allowed by this section." Thus, on a $100,000 estate, the minimum fee charged by an attorney for probate would be $3,780. A higher fee may be charged on work in law. However, the fee must be approved by the court. The minimum fee schedule notes that many judicial districts in Montana, there are court rules which set attorneys' probate fees. However, several courts were contacted by phone, and most court rules follow the minimum fee schedule. Since courts are free to fix whatever they determine to be reasonable probate fees, there are no set uniform fees based on the size of estates. The complaint is that probate fees are too high. Establishment of a public probate attorney paid on a salary basis would eliminate exorbitant estate probate fees. Some states have set up procedures whereby solvent estates can be probated without court intervention. However, legal forms must be filed, which means the attorney still must be consulted. The only solution for reducing high probate fees for attorneys, then, is a public probate attorney. In our discussion of this amendment, I hope we arrive at a more equalization of estate costs. Some method must be found that will provide a solution for the many people who are complaining about the present system. The adoption of this amendment would make available services for those who wanted to use them. Mr. Chairman, I urge the adoption of this amendment.

**CHAIRMAN GRAYBILL:** (Inaudible)

**DELEGATE DAVIS:** Mr. Chairman, I'll take the bait for the legal profession, now that it's been put forth, and only say this is a statutory thing. If we reach the place where you've abandoned all hope of writing a Constitution, then we can start playing with such things as fixing what—we set up an ombudsman for the wealthy rancher who's worried about the fee, and I don't think we should inject ourselves into either fixing attorneys' fees or the price of grazing fees on state lands or anything else of that nature that's strictly statutory, and I think we should vote on it, and I guess we'll determine how we're going to progress with a Constitutional Convention after that.

**CHAIRMAN GRAYBILL:** Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman, I hesitate a little bit to rise on this one. You know, I've been getting along pretty good with my seatmate here all day, but Delegate Wilson is right. This is probably one of the things that more people talked to us about in our district than any other one item, and that was that, when there's a reasonably small estate—say, 40-$50,000—I'm not talking about wealthy ranchers. I don't know whether Delegate Wilson is one or not, but he may be. I don't think so. But when one of the older—say it's an older couple—one of them dies, before the widow gets out of it, why, she'll have anywhere from 1,000 to $2,000 in an attorney fee. Now, most of the work will be done, perhaps, by the secretary, because generally these estates are in pretty good shape. There isn't very much to look at, and it's just too much money for what you get. Now, I think personally this is something the legal profession could probably straighten out, but apparently they have not straightened it out, so maybe something like this will bring it out to where that they will. And, to finish this off, I don't know of any other service that you buy that you're required by law that you must buy this service and then the fee for that service is determined by the amount of money that you have. Now, there may be other businesses that you pay this way, but I certainly don't know of any, and I would support Proposal Number 155—it was in the original. I think the Judiciary Committee rejected it and that's why it's being brought back here. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Siderius.

**DELEGATE SIDERIUS:** Mr. Chairman, I don't see eye-to-eye with Mr. Wilson too often, but I do on this issue. I think he has—this proposal has merit, and I'll support it a hundred percent.

**CHAIRMAN GRAYBILL:** Mr. Jacobsen.

**DELEGATE JACOBSEN:** Mr. President and fellow delegates. I haven't been on my feet, but this was one of the topics that was brought to my attention and the attention of others quite firmly. A Mr. McConvil up there had a small estate to settle, and he had to pay out more than 50 percent of that to settle the estate, and others that have had just a lot of problems in getting estates settled. I remember when my father-in-law passed away about 15 years ago in Butte, there were two deeds to property. When he passed away, all my mother-in-law had to do was sign the other deed and file it. Now, this is a thing of the past, but it was a simple way for our parents to settle small estates. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Loendorf.

**DELEGATE LOENDORF:** Mr. President, would Mr. Wilson yield to several questions?

**CHAIRMAN GRAYBILL:** Mr. Wilson, do you want to yield?

**DELEGATE WILSON:** I yield.

**DELEGATE LOENDORF:** Mr. Wilson, have you estimated how many attorneys the government would have to employ to perform this function?

**DELEGATE WILSON:** Well, Mr. Furlong—is that the name? (Laughter) Loendorf—Loendorf, excuse me.

**DELEGATE LOENDORF:** That's closer than some. (Laughter)

**DELEGATE WILSON:** You both have yellow shirts on today, you got me a little bit confused. I think we say in our proposal that there would be one in each judicial district. Now, this would be available for whoever wanted to use them in that capacity.

**DELEGATE LOENDORF:** And in the Judicial District of Yellowstone, how many attorneys do you think it would be necessary to employ there?

**DELEGATE WILSON:** This would be determined on the amount of use you wanted to make of this particular person. If everybody wanted to use him, why, perhaps you would need several.

**DELEGATE LOENDORF:** I'll summarize my final question, then. Have you made an estimate, in addition to the cost of the attorneys' salaries, the cost for libraries, office space, and secretaries?

**DELEGATE WILSON:** We have made no estimate on this particular area, and we see that this is something that would have to be determined as the thing was tried and used.

**DELEGATE LOENDORF:** That's all the questions I have. Mr. Chairman, could I speak to the merits?

**CHAIRMAN GRAYBILL:** Yes.

**DELEGATE LOENDORF:** First of all, as Mr. Davis ably pointed out, I think this is not a constitutional matter and I think locking this in the Constitution would be a grave mistake in lieu of the answers Mr. Wilson gives to the questions. What will it cost the taxpayer? I submit it will cost the taxpayer more than the total amount of attorney's fees now being paid in the State of Montana each year. Each attorney now furnishes his own office, his own secretary, and his own library—all, of course, is a part of the fee he charges you. But also look at who benefits from this. The average taxpayer is going to have to pay the bill. If you're wealthy and have a big estate, you can avoid a large fee by employing a government attorney, but if you're not, you're going to have to pay for everybody else's estate.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, along the line of what Mr. Loendorf was talking about, in Yellowstone County I would guess our firm—a small firm, a three-man firm—probably does in the neighborhood of 20 to 25 probates a year. That's on a good year. Many of them are small, and one or two of them are of some size. I would guess that it would require—if one of us was working full-time, it would require the services of that one partner to do all the probates our office does in a given year. Now, we are three lawyers out of a 110 or 115 in Yellowstone County, and all the other lawyers are doing probably about the same amount of probate we're doing. I would guess, in Yellowstone County alone, the proposal that Mr. Wilson and Mr. Kamhoot and the others have made would require 25 lawyers to handle the probate work in Yellowstone County on this basis.

**UNIDENTIFIED DELEGATE:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Just a moment. Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I presume that, after the manner in which we disposed of the county attorney and the clerks of the District Court and the clerks of the Supreme Court by turning them over to the tender mercies of the Legislature, that certainly the probate attorney would likewise be statutory in character rather than constitutional. However, I want to say this: the handwriting's on the wall on this matter. Everywhere that I go I run into complaints about it, and they even come into my office, hunting me down to complain about it, and I have nothing to do with it. I find that in the State of Washington, to the west of us, they have to a degree solved the matter—not in the large estates, but in the small ones—not by establishing an office such as the probate attorney, as is envisioned by Delegate Wilson, but they have provided a means by statute whereby certain estates, especially the smaller ones where only the decedent and his spouse are concerned—his or her spouse are concerned—can handle it by filing an affidavit with very little cost, very little procedure in the court, and that obviates the necessity of carrying out a complete probate. Now this agitated the people of the State of Washington for a considerable time, and they tried to get action in the Legislature—I don't believe they ever tried to through constitutional means—but they got nowhere in the Legislature, and the matter was resolved by use of initiative and referendum, and the people of the Evergreen State voted overwhelmingly in favor of the proposition, and it's been in force for several years, and the attorneys who I've contacted there for senior citizens who are interested, aver that it has been very satisfactory.

**CHAIRMAN GRAYBILL:** Mr. Studer.

**DELEGATE STUDER:** Mr. President, now that this matter has been brought up, I remember I have three or four letters here that I received that were very adamant on somebody doing something on these probate matters, and some of them seem to be—have some pretty good complaints. I don't happen to have them with me, but I do know that Colorado, some time ago, had a law put in in which they handled small probate matters at a very small fee. I don't think the cost to the state would be too much, because, as Delegate Schiltz said, they handle probably 25. If you gave them all to one man, it would keep him busy—an average price of 1,000 or so on those and for the average probate cost, it would make some lawyer a good living. I don't see where the small cost attached to this probate deal would be too bad. That's all.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** Mr. Chairman, I have managed to refrain throughout the day from commenting on anything dealing with the Judicial Article. I suppose I could say I am still refraining from discussing anything dealing with the Judicial Article. But we are talking about something of importance, and it is something that I know something about. I do quite a lot of this type of work, and there's a lot of justice in what is being said here that there are many occasions, I think, where the attorneys are rather grossly overpaid, and it isn't just that they're overpaid, this has to come in cash when cash may be hard to find. It comes at a time where many adjustments to be made often within a family, and it's really a very sad situation. There is one other thing that is considerably worse that happens at the same time. It's the fee paid to the executors and administrators for doing nothing. So don't neglect that if you're going to muck out here a messy situation. Let's get to the bottom of it. There's one other thing you might keep in mind. You know, the State of Montana doesn't have clean hands in this matter. They rap that widow for a pretty juicy chunk of dough and stick it in our general fund. So, let's get at that one, too. Those inheritance taxes we pay in the State of Montana often exceed what's paid to the federal government. This is something that you may not realize, but there's a $60,000 exemption in all federal estates, and the amount of tax paid there, added to these executors' or administrators' fees and this attorney fees, they're pretty rough, and I think there must be—I think Mr. Romney is right—the handwriting's on the wall, and I think it's time we did something about it. I doubt very much that it belongs in our state Constitution, nor that we should decide it here on the floor of this Convention in these minutes, but if we are going to stop here and take the time to deal with a problem, I'd like to do it, but I'd want to do it right. We would need quite an army, all right, of people, because there's a lot of this work to be done and it rolls around to all of us, one time or another, that our estate is going to be probated, so you can count on the fact that it's going to be continuing forever, and the sad part about it here, I think, is that in connection with this there's a slap at the legal profession. Maybe the trouble with lawyers is they're picked out of the general populace, so there's bound to be some rotten apples creep into that profession as they do into everything else. But, aside from that, somehow the amount of the legal fees is justly subject to criticism, and if you will approach this in a way that deals with all of the evils attendant upon the cost charged to the estate of a deceased person at the very time when it's the hardest to pay, then I say, well, let's go at it.

**CHAIRMAN GRAYBILL:** Mr. Brazier.

**DELEGATE BRAZIER:** Mr. Chairman, fellow delegates. I would just offer for your information prior to vote a couple of additional observations. In addition to the sometimes detailed method in which we are obliged to indulge in arriving at taxes due as a result of the death of somebody, we also find ourselves involved in trying to unravel a very complex status of title to real estate, which is the result of some laws that have evolved over something like 400 years. This is another evil which takes a lot of time, and it takes, at this state in history, expert legal training and knowledge. This is something else that has to be unraveled. Now, with respect to handling of small estates, it may be of interest to you to know that there is on the books now a statute, 91-5301, which provides for the setting aside of an estate to a widow or her children or a surviving husband when the estate totals $10,000 or less. So, Montana, by legislation, is keeping in step with the states of Colorado and Washington. In addition, there is another procedure which, if you go to a lawyer, you'll learn about—sometimes it's advisable to indulge in—I should say there are two. You can establish or accumulate a sizable estate in real estate—excuse me, in life insurance which is the subject of a [illegible] life insurance tax exemption in the State of Montana, in addition to which, if you want to shorten up your taxes and your cost, you can consider putting your estate in joint tenancy with your wife, if you trust her, and the result of that will be that when one of you dies, the survivor will accrue to only one-half of the estate, and there has been an abbreviated procedure established by the Legislature for handling that, and it usually generates a much smaller fee and a much smaller inheritance tax. I hope you'll bear those things in mind when you deliberate on this motion. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, would Mr. Felt yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Felt?

**DELEGATE FELT:** Indeed.

**DELEGATE SCANLIN:** Mr. Felt, would it be possible for you to draw a statement that we could submit to this Constitutional Convention, addressed to the Legislative Council, urging our attention on the matter of this question of probate to the next session of the Legislature?

**DELEGATE FELT:** Yes, Mr. Scanlin, it would be possible for me to draft something, which I would like, and if the body here in some appropriate manner made such a request, I'm sure there are many others besides myself who could do so, but I would be glad to help with any such thing as that if called upon.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. Wilson's motion that a Section 14 be added to this section—to this—

Mr. Wilson, do you want to close?

**DELEGATE WILSON:** Please, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Surely.

**DELEGATE WILSON:** I realized that when I introduced this motion that I was going to get a lot of opposition from the legal profession. I realize the many complications that are inured in the handling of probate matters. I, myself, doubt very much that I would ever want to use this person who was appointed, but I do visualize many people, which have been pointed out here today, that would want to use this type of a service, and I think that we should give it all the consideration that we possibly can here in this body. I realize that attempts have been made in the past sessions of the Legislature to try to correct some of these situations, and I talked with members of the Judiciary Committee, many of whom, after giving it due consideration, agreed with me that something needed to be done. I talked with Mr. Aronow, and he also agrees that if some method could be arrived at by this Convention whereby small estates—or some system could be set up to handle smaller estates and make it available to the people to use, that it would be a service that would be greatly appreciated by these people. Now, if we can also point out, the main thing that we are—I am interested in is getting some equalization across the State of Montana for these fees that the lawyers charge for the handling of different estates. Now this varies very greatly from court district to court district. It varies with the judge who is handling the estate, and if we could, if nothing else, accomplish an equalization of these fees, we would be doing a great service to the people of Montana. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** The issue now arises on Mr. Wilson's motion that we add a Section 14 to the Judicial Article, calling for a probate attorney. "The district judge shall appoint in each judicial district a probate attorney who has been admitted to practice law in Montana. The probate attorney shall assist county or judicial district citizens in probating or administrating estates. The Legislature shall set the salary of the probate attorney." So many as shall be in favor of the motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as shall be—

**UNIDENTIFIED DELEGATE:** Roll call.

**CHAIRMAN GRAYBILL:** No, it's too late now. So many as shall be opposed, say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The motion fails. Now, I paused and I waited and I don't think, if you didn't get up, that I should reverse myself and put everyone on record on that. It's defeated. Now, Mr. Schiltz has a proposal that's known as the separate majority proposal on campaign expenses. It appears on page 38 of your book.

Mr. Schiltz.

**DELEGATE SCHILTZ:** May we have it read, Mr. Chairman?

**CHAIRMAN GRAYBILL:** Will the clerk please read what will now be styled Section 15. We're going to continue right up the numbers here—Section 15 on page 38.

**CLERK SMITH:** "Section 15, Campaign expenses. The Legislative Assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justice of the Supreme Court and District Court judges and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the Supreme Court or District Court judge, nor any person or persons in his or her behalf, shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the Legislative Assembly." Section 15, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 15 of the Judicial Article, that it recommend the same do pass.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman and members of the Convention. You've heard all day long about the maintenance of purity of elections of the Judiciary. I view this particular section as possibly the most progressive thing I've seen in this Convention yet. It has the effect of putting all candidates on an equal basis from the standpoint of money, which is really the name of the game. It eliminates the possibility of a man with less ability and more money from getting the judicial office. If you're going to have a judge run nonpartisan, I think it's only fair that the Legislature supply the money. Now, when you consider the amount of money involved in this and the benefits to be gained, I think you'll see the worthwhileness of it. If all 28 District Court judge elections were contested in the general campaign and if all five of the Supreme Court justice campaigns were contested, it would cost—and if you assume that $10,000 would cover a Supreme Court campaign race and $2,000 a District Court race, it would cost the state $48,000 a year, and I think that's a pittance in view of the benefits to be gained by it. You would assure yourself of an independent Judiciary. You would assure yourself that one man was not buying the job. Now, it seems to me that we must maintain the purity of our judges, and it seems to me that this is possibly a way of the future. I read the other day that if Mr. Muskie is able to go through all the campaigns and finally be elected President of the United States, it's going to cost him or somebody $40 million. I think it's in the future that this is going to come to Montana, and I can think of no other, better place to start as an experiment for a very small amount of money than on the Judiciary. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, you have before you on page 38 the separate majority proposal on campaign expenses.

Mrs. Bowman.

**DELEGATE BOWMAN:** Mr. Chairman, I rise to oppose this proposed section on several counts. It is, indeed, an experiment and for that reason should certainly not be locked into the Constitution. If it is felt that this is necessary for judges to run, then I suggest that the Legislature be approached. Secondly, Mr. Schiltz mentioned that if we were going to have our candidates for judicial office run on a nonpartisan basis, this was necessary. I believe that earlier in the afternoon we did not specify that they had to run on a nonpartisan basis. Presumably, then, the Legislature can make it possible for them to run on a partisan basis, in which case they can apply to the party of their choice for campaign funds. As a taxpayer, I really do not wish to have part of my taxes go to someone's campaign expenses.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. Schiltz's proposal—it's Section 15, being the separate majority proposal on campaign expenses on page 38—be adopted. This provides that the Legislative Assembly would appropriate funds in contested general election campaign expenses for candidates for offices of justices of the Supreme Court and District Court judges, and nobody could spend any money on their behalf except the money appropriated by the Legislature.

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I ask for a roll call vote and sufficient seconds.

**CHAIRMAN GRAYBILL:** Very well, we'll have a roll call vote. All those in favor of the motion, please vote Aye on the voting machines; all those opposed, please vote No.

Mr. Felt.

**DELEGATE FELT:** (Inaudible) terminating the opportunity to discuss this by the request for the roll call, perhaps wasn't as loud as I could have been.

**CHAIRMAN GRAYBILL:** All right, we'll cancel the vote, and we'll start all over again.

**DELEGATE FELT:** And I had anticipated that at least Mr. Schiltz might close. I wish to rise, very quickly, but to support the motion of Delegate Schiltz. If this is going to be defeated because it's an experiment, keep in mind that the federal Constitution was—contained a whole series of experiments, and they were thought to be quite suitable for use in a constitution, so I don't think anything should be ruled out completely simply because it's new, any more than it should be accepted for that reason. Here we do have an opportunity, I feel, as Mr. Schiltz has expressed, to do something important. I don't know how many of you have ever been asked to contribute to a judicial campaign. I haven't, and as a consequence I have never contributed to one. Makes me feel a little uneasy, to tell you the truth. Somebody's doing it, because they can't wage that campaign without it, and I'd rest easier knowing that there wasn't somebody in there ahead of me who might have gotten a little influence. We pay for all things, of course, some way or other, so the objection, I think, that as a taxpayer we're not going to pay for this isn't really valid. We are going to pay for it. Somehow they get it around to us, and I feel this should be taken as a very serious possible reform and that in the wisdom of the Legislature they can decide how far to implement it with the provision of funds, but that this is something we really ought to take a good look at, and I'm certainly hopeful that it will get support.

**CHAIRMAN GRAYBILL:** Very well, the issue now arises on Mr. Schiltz's motion that a Section 16 be added concerning campaign expenses, the same as is shown on page 38 as separate majority proposal on campaign expenses. I have explained it to you. We'll use the voting machine. So many as are in favor, please vote Aye; and so many as are opposed, please vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Close the ballot. Take the ballot, please.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Aye |
| Aronow | Aye |
| Artz | Aye |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Nay |
| Belcher | Absent |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Nay |
| Campbell | Aye |
| Cate | Absent |
| Champoux | Nay |
| Choate | Absent |
| Conover | Nay |
| Cross | Absent |
| Dahood | Aye |
| Davis | Absent |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Absent |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Aye |
| Foster | Aye |
| Furlong | Nay |

| | |
|---|---|
| Garlington | Nay |
| Gysler | Nay |
| Habedank | Absent |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Absent |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Aye |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Absent |
| Ward | Aye |
| Warden | Aye |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Aye |

**CLERK SMITH:** Mr. President, 46 voting Aye, 45 voting No.

**CHAIRMAN GRAYBILL:** 46 delegates having voted Aye, 45 delegates voting No, Section 15 is adopted. Now, ladies and gentlemen of the committee, we have only one more matter that's been brought up to us, and that concerns the justice of the peace. Therefore, I'm going to propose that we go right ahead, rather than have a recess. Mr. Harrington, may we read your amendment to provide for a Section 16?

Mr. Harrington's amendment—

**DELEGATE ESKILDSEN:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, we do have two other sections here. They are in the Constitution as we now have it. Will we be doing anything with those, or will they just be considered because they're in the old Constitution that we are adopting them?

**CHAIRMAN GRAYBILL:** I don't think that—

**DELEGATE ESKILDSEN:** There's the exemption law and another section besides that—I can remember—in the Judiciary Committee. We had them before us.

**CHAIRMAN GRAYBILL:** Well, just a moment. Mr. Eskildsen, we voted to go down the minority report; and we've gone down the minority report; and we've picked up everything we've passed; and so, unless somebody makes an amendment, we're all through, as far as I can see.

Mr. Holland, isn't that correct?

**DELEGATE HOLLAND:** No, there are two unanimous proposals at page 65.

**CHAIRMAN GRAYBILL:** Oh. Well, let's see. Wait a minute then. I see. Well, I still think we ought not to have a recess. I think we'll be through here in a few minutes. Mr. Harrington, your proposal is to have add a Section 16, which would be the same as on page 45, is that right?

**DELEGATE HARRINGTON:** (Inaudible) Mr. Chairman.

**CHAIRMAN GRAYBILL:** No. It's the same as the majority's Section 16 on page 8, and it happens to be proposed Section 16. May the clerk read it?

**DELEGATE HARRINGTON:** Yes, Mr. Chairman.

**CHAIRMAN GRAYBILL:** All right, clerk, page 8, Section 16, of the majority report, beginning at line 26. Will you please read.

**CLERK SMITH:** "Section 16, Justices of the peace—election, qualifications, compensation, jurisdiction. There shall be elected in each county at least one justice of the peace, with qualifications, training, and monthly compensation as provided by law, who shall hold office for the term of four years. There shall be provided facilities for such justices so that their duties may be performed in dignified surroundings. Justice Courts shall have such original jurisdiction within their respective counties as may be prescribed by law. They shall not have trial jurisdiction in any criminal case designated a felony, except as examining courts. The Legislature may provide for additional justices of the peace in each county or other types of courts below the District Court level as is deemed necessary." Section 16, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. Mr. Harrington has proposed an amendment to add a Section 16 to the Judicial Article, the same as Section 16 on page 8 of the majority report.

Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman, I move that when the committee does rise and report, after having under consideration the new Section 16 of the Judicial Committee Article, that the same do pass.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** Saturday afternoon, it took us about, I'd say, five minutes to completely wipe the Justice of the Peace Courts off the books as far as the Constitution is concerned. I feel, as many Montanans feel, that the Justice of the Peace Court—or the poor man's court is another name for it, or the people's court—is one court that should be maintained in the Constitution. Now, the article—Section 16 in the majority report does set forth that there shall be qualifications, and I believe that there should be reform in these courts, but I do believe that these courts should remain. These are the only courts in Montana that a citizen can appear before them without the benefit of lawyer, and I feel that it's very important that these be maintained. And I feel as we go through the procedure this afternoon, we have wiped out quite a few jobs—I don't mean jobs, I mean quite a few constitutional positions—and I feel that this particular section should be passed and maintained. However, I do feel that the qualifications should be set and reforms should set into these courts, but I feel they are important. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman. George Harper, you asked someone to wave a flag when we started talking about the people's court. Here it is. The majority report, which is now the amendment proposed by Delegate Harrington, would put in the Constitution an elected people's court. What is the difference between that and the minority report? The minority report simply says, leave it up to the Legislature. I don't want to leave it up to the Legislature. I want elected people's courts in this Constitution. Now, this majority report does many things that the citizens council wanted. It abolishes this fee-sharing system. It requires that they be on a monthly compensation. It directs the Legislature to establish minimum training and qualifications. Now, how does this work under the present system—and the amendment here would upgrade them. But under the present system, for $3.50 you can file a complaint. That's all it costs you and you don't need a lawyer, which means that if your neighbor backs across your lawn and crushes your bike, you can sit down without an attorney and draw a complaint and he's in court. You can serve the summons yourself. If you think the JP might not believe that it was validly served, you can pay the sheriff $1 and his mileage and have him served, and that's all that's necessary. And the reason I cite this example, I want to show you what the difference can be between keeping them elected in this Constitution and letting the Legislature, perhaps, adopt a plan such as the Montana Plan where a committee appoints a magistrate. When you have your trial, let's assume this justice of the peace, or whatever you want to call him, says he's going to throw you out of court because he didn't like the color of your bicycle to begin with. What do you do if you have an elected JP? You can run against him. Or you can get your neighbor on the other side, Fanny Belle Nickleberry, who is an honest, uprighteous citizen, and you can campaign up and down the street—Fanny Bell for JP—and get her elected and defeat this incumbent who is arbitrary. What can you do if it's an appointive system? I suppose you can go searching for the committee or council that appointed him. And what can you do when you get there? Presumably he's a friend of theirs or they wouldn't have appointed him in the first place, and what if you don't get satisfaction from the committee that appointed this magistrate? There's no way you can get rid of the committee. I submit that this is a very serious constitutional question. The majority plan meets head-on all the criticisms of the present system and in addition requires that they be elected so they're responsive to the delegates, to the citizens of Montana, and not to the committee that appointed them. In addition, there's a practical reason. We are all assuming, under the minority plan, that there is going to be some level of people's court. We just as well call them justices of the peace so we don't have 200 incumbent judges around the state saying, "They've abolished me." Lord only knows what's going to happen. In addition, it preserves the right of appeal to the District Court. I know you couldn't get Bob Kelleher from Billings to take care of your appeal from JP Court to District Court, but in Polson we can get it done for the price of a good bicycle. Under the Montana Plan, if you had to appeal from the appointed magistrate's decision, it would be straight to the Supreme Court of Montana, and even in Polson we couldn't get that done without you getting into the bicycle business. I urgently support the amendment and urge the delegates to consider this.

**CHAIRMAN GRAYBILL:** Mrs. Warden.

**DELEGATE WARDEN:** Mr. President, I would just like to say that just because they don't happen to be in the Constitution doesn't mean that they don't have to be elected. I personally think that they could very well be elected, that the Legislature could so decide, and I think that to put them in the Constitution would be not doing a very good service to Montana.

**CHAIRMAN GRAYBILL:** Mr. Furlong.

**DELEGATE FURLONG:** Mr. Chairman, I have a question. Are we talking about Mr. Harrington's proposal or are we talking about the majority proposal? I'd like to ask him if he'd yield to a question.

**CHAIRMAN GRAYBILL:** All right, he may yield, but the answer to your question is, Mr. Furlong—or, Mr. Harrington proposed an amendment, the text of which is Section 16 of the majority report, on page 8, Justices of the peace—election, qualification, compensation and jurisdiction. If you want to find the text of what he proposed, it's on page 8 and 9 of the booklet, in the majority report.

Mr. Harrington, will you yield?

**DELEGATE HARRINGTON:** Yes, I will yield, Mr. Chairman. Yes, what I was doing is taking this exactly from Section 16, on page 8 and 9 of the majority report.

**CHAIRMAN GRAYBILL:** Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman, I rise to a point of order. I read the proceedings of Saturday, which says that Section 1 of the majority report be adopted as the first action of the Committee of the Whole which was reported to the Convention, and this is an amendment to Section 1. Are we talking about reconsideration?

**CHAIRMAN GRAYBILL:** No, sir. Section 1 was adopted. It may or may not be amended on reconsideration, I don't know; but in any event, Mr. Harrington has proposed adding another section concerning justices of the peace.

Mr. Ask.

**DELEGATE ASK:** Mr. Chairman, I rise in support of Mr. Harrington's motion to adopt Section 16 of the majority report. I concur on what's been said by the other persons speaking on this matter, and I'll just add one more thought to this. We covered the Supreme Court today—that we have indicated that they consider approximately 200 cases—I think that was the figure. We have 28 district judges in the State of Montana; I don't know the number of cases that they consider. And now we're coming to the courts of Montana that handle far the majority of all of the cases filed in Montana, and by the minority report we're going to completely ignore them. Here's a court that the people can go to in every community and the number of cases—the highway cases, all types of cases—and I don't think we should ignore them in the Constitution, and I think this particular section, reducing it down to one instead of two in every township, providing for compensation—monthly compensation—and training and qualifications certainly improves the old Constitution, and I think that's what we were sent here to do—to improve it. This section certainly improves the Justice Court system. Also, you will note this section provides that the Legislature can also provide for other courts below the District Court level if it's deemed necessary, so we are not necessarily locking in the Justice Court as the only lower court. But I think they're important enough to the people of Montana that we should retain this particular section in this wording. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I rise in opposition to this amendment and to this proposed section; I think it's 18—16. I thought yesterday and this morning we had very ably taken care of the inferior court system. We gave it flexibility, the likes of which it's never had before. We tried to set up a system that will grow, that will go on for future generations and adapt to their problems with facilities the likes of which our Constitution has never given us before. I don't believe that we should lock in any lower court into the Constitution. I am a confirmed believer in two constitutional courts, that being the Supreme Court and the District Court. I believe that courts on the lower level should be flexible, should be adjustable, and I do not believe in designating them also as constitutional courts, regardless of what you call them. Now, we, this morning, discussed all kinds of possibilities that may be handled under the minority article as it was adopted pursuant to the concurrent jurisdiction theory. If we adhere to that, we have given to this judicial system great flexibility. We can provide from here on out for any number of kinds of courts, for any number of methods of selection on the lower level. We leave it to the Legislature, and it can be done over the years—not just for ourselves, but for our children; and I am opposed to imposing any particular lower court system on them at all.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman, I realize the sense of this Convention is that they don't seem to care what the citizens want, and I think they're going to find out when they put this thing up to a vote. But for the information of the delegates, in citizen suggestions—those are suggestions referred by the Chair to the Judicial Committee—if my memory serves me correct, 117 citizen suggestions were for the retention of the Justice Court within the Constitution, 6 were against.

**CHAIRMAN GRAYBILL:** Mr. Harlow.

**DELEGATE HARLOW:** Mr. Chairman, I talked with a group of people in my community yesterday in a telephone conversation, and the master of ceremonies at the other end of the line polled the entire adult group, and they were all in favor of disposing of the justices of peace. We have no need to redebate this question on Justice Courts. We decided it once this morning, and I think it is unnecessary to bring it up and try to add it into the Constitution. We have been deleting these legislative proposals all along, and I hope we continue to delete this one.

**CHAIRMAN GRAYBILL:** Mrs. Reichert.

**DELEGATE REICHERT:** Mr. Chairman, I wish to speak in opposition to Mr. Harrington's amendment. I think there is no need to mention justices of the peace in our Constitution. The very fact that 31 out of the 50 state Constitutions do not mention justices of the peace—I think there is meaning to this. And I want to say that in 1962, when there was an amendment on the ballot—there was an amendment to remove mention of justice of the peace from our Constitution—and at that time, this failed by only 1,173 votes, and I think now that the people in the state are ready to dispose of names. I'm sure that we're going to have a justice of the peace system, whatever it's called. We're going to have Small Claims Courts. I'm certain the Legislature is going to handle this well, but I think, as Mr. Berg said, there's no need to lock in the term "justice of the peace" in our new Constitution.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I am opposed to the justice of the peace system as we have it now, but I favor the amendment of Delegate Harrington. I think when the majority proposal, which represents the basis for Delegate Harrington's proposal, is examined, it is giving us precisely what we want in the State of Montana. It has given us the Small Claims Court that is going to affect more citizens than any other branch of our judicial system. If we are going to set forth in our Constitution a Supreme Court and a District Court and we are going to outline the type of structure that we want in that particular area of judicial concern, then why don't we complete the task? And if we're going to be judicial architects, let's finish the job. Let's make sure the temple of justice has all of its pillars, and the one pillar that's going to be missing now is the one with respect to the Small Claims Court. That's the one where the citizen wants to take his 500-dollar case or his 1,000-dollar case. That's the type of case the lawyer doesn't want in his office. He wants that in a Small Claims Court. He wants the citizen to be able to take care of that matter without having to spend money to retain an attorney. What bothers everybody here, I think, that is bothered is the fact that we're using the term "justice of the peace". I see no magic in that term. It's as good a term as any that can be evolved at the moment, whether you use the term "magistrate", "small claims judge", or any other particular synonym that you might come up with. I say that if we look at that particular proposal that Delegate Harrington has brought forth before us now, we have a proposal that gets away from the reason for the critique that's been leveled against the Justice Court in the past, and I say it's up to us here, as delegates of the people, to make sure that we have provided a total system of justice for the citizens of the State of Montana, and we must complete it by enacting some type of provision for the Small Claims Court. And this delegate proposal now fills that particular task. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Pemberton.

**DELEGATE PEMBERTON:** Thank you, Mr. Chairman. I come from probably one of the smallest counties in the State of Montana, probably the—one of the most remote. We are a hundred miles from public transportation; we would be a hundred miles from a district judge. There is no way that I would possibly not have the people of these rural areas taken care of. In the now past Montana Plan, every place that it said except for rural Montana, grass roots, jackrabbits, sagebrush—it doesn't matter; that's it, that's what I represent. These specifications were put into the plan so that in case there was an attorney had to be there and was not available, a responsible person from the community could be appointed to fill this place. By eliminating or not using these in the Constitution, I feel that the Legislature will very well take care of the people of Montana the same that everyone here in this delegation would feel about it. Mr. Holland referred to a poll that he had, a few minutes ago. I have the results of a poll here that he sent out and wrote and devised to all the attorneys in Montana, and of the 532 who answered the polls and the figures came back, 434 of them said that Justice Courts should not continue to be a constitutional court; 67 said they thought they should. I think this is a very good time of the season—it's a very good time in this Convention, possibly, to say "draw near with faith". I have

**CHAIRMAN GRAYBILL:** Mr. Barnard.

**DELEGATE BARNARD:** Mr. President, I rise in support of Delegate Harrington's motion. At home, I think 90 percent of the people are in favor of retaining the Justice Courts in the Constitution; and I can tell you people this much: if you want to retain any kind of local court, small courts, in your areas, this is the place to put it. Don't leave it to the Legislature.

**CHAIRMAN GRAYBILL:** Mr. Joyce.

**DELEGATE JOYCE:** Mr. President, I move an amendment to Delegate Harrington's motion in the following words: "In establishing any inferior court system, the Legislature shall require the judges thereof be elected by the people."

**CHAIRMAN GRAYBILL:** Will you write that down. Do I understand that's a substitute motion for the entire Section 16 as he proposed it?

**DELEGATE JOYCE:** Yes, Mr. President. May I be heard?

**CHAIRMAN GRAYBILL:** Just a moment. Mr. Joyce has proposed a substitute motion for Mr. Harrington's motion, which was Section 16 on page 8. The substance of the substitute motion is: "In establishing any inferior court system, the Legislature shall require that the judges thereof be elected by the people."

Mr. Joyce.

**DELEGATE JOYCE:** Mr. President, in support of this motion—this proposed amendment which I just drew off the top of my head—listening to the arguments here, it seems to me that the problem is this: the justices of the peace around the state, apparently, and the people in the rural areas are concerned that there may be abolished justices of peace as we presently know them. And, of course, no one in their right mind can do that, because in the rural areas you must have magistrates and they can't always be—magistrates, judges, whatever you want to call them—someone to administer the petty criminal offenses and the small claims and to arraign people who are picked up on criminal offenses. But it seems to me that using the word "justice of the peace" doesn't add anything to it. It ties into the Legislature a particular term, and the principle that it seems to me we established here this morning in the Supreme Court and in the District Court is that these judges should be elected, and it seems to me my amendment should satisfy everybody in that it simply provides that the Legislature can set up any inferior court system that it wishes. It may have two or three Small Claims Courts, criminal—small criminal courts, arraigning courts—whatever you want to call them. I would think that in some counties the Legislature might want to have four or five, if it's a large area where people have to travel, but that the principle we're trying to establish is that whatever kind of inferior court system the Legislature set up, and I'm perfectly willing to let the Legislature set up any kind of a system that the people want as time goes on—I think that if we establish the principle that whoever mans these courts be elected by the people, why, then, we should have satisfied everybody.

**CHAIRMAN GRAYBILL:** Mr. Harrington.

**DELEGATE HARRINGTON:** Mr. Chairman, I rise to oppose Mr. Joyce's motion. I feel Section 16, Justice of the Peace—election, qualification, compensation and jurisdiction, is satisfactory. I feel this is—I would stand on this particular—as it is written in Section 16. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mrs. Eck.

**DELEGATE ECK:** Mr. Chairman, would Mr. Joyce yield to a question?

**CHAIRMAN GRAYBILL:** Mr. Joyce?

**DELEGATE JOYCE:** I shall.

**DELEGATE ECK:** Mr. Joyce, would this apply to municipal Police Courts?

**DELEGATE JOYCE:** Well, I think that the jurisdiction to establish—this particular section—Mr. Harrington doesn't address himself to the so-called municipal Police Courts. I think that the Legislature, having plenary powers, can set up Police Courts—as they call them, municipal courts—with the municipalities and so that—I wouldn't think that either Mr. Harrington's proposal or mine would necessarily apply to that, but mine would come closer to it in that any inferior court system that's set up below the level of the District Court, I simply provide that the judges thereof shall be elected. So, I don't know if I've answered your question—it seems to me that what the—we're in the Judicial Article, and Delegate Harrington's proposal pertains to Justice Courts, which are county courts, as we currently know them; and I take it that's what he intends to maintain, so that you'd have one justice of the peace in each county, and it neither—his proposal does not address itself to the so-called Police Court.

**CHAIRMAN GRAYBILL:** Mr. Joyce, your answer does not seem to be an answer; and, Mrs. Eck, the plain language here would seem to imply an answer of "yes". (Laughter)

**DELEGATE ECK:** Mr. Chairman, that's what I was afraid of, and I would certainly oppose breaking down our system of Police Courts now and requiring municipalities to elect their Police Courts.

**CHAIRMAN GRAYBILL:** Very well. The issue arises on Mr. Joyce's motion to substitute, in place of the Section 16 that Mr. Harrington has proposed, a section which would say: "In establishing any inferior court systems, the Legislature shall require the judges thereof be elected by the people."

Mr. Wilson.

**DELEGATE WILSON:** I ask for a roll call vote.

**CHAIRMAN GRAYBILL:** Very well, we'll have a roll call. So many as shall be in favor of that, please vote Aye on the voting machine; so many as are opposed, please vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** The vote is closed. Please tally it.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Absent |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Absent |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Aye |
| Campbell | Absent |
| Cate | Absent |
| Champoux | Nay |
| Choate | Nay |
| Conover | Nay |
| Cross | Absent |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Nay |
| Etchart | Absent |
| Felt | Nay |
| Foster | Nay |
| Furlong | Absent |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Absent |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Aye |
| James | Absent |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Absent |
| Leuthold | Nay |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Absent |
| Skari | Aye |
| Sparks | Aye |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 16 delegates voting Aye, 73 voting No.

**CHAIRMAN GRAYBILL:** 73 delegates voting; 37 voted No and only 36 Aye, that motion fails. We're now considering again Mr. Harrington's amendment of a Section 16, the text of which is on pages 8 and 9.

Mr. Harrington, do you want to close?

**DELEGATE HARRINGTON:** Yes, Mr. Chairman. Fellow delegates, I think this is a very, very important point we've come to in this Convention. We have worked on a people's representative. We have worked for probate lawyers, and I think now—we've called these "progressive". Many of the people that have called these progressive now find that the Justice of the Peace Courts or courts of this kind are not progressive. I say these are progressive, and I say this is the last place that the people will have their voice, and I hope the delegates will vote in favor of this. Thank you; and I'd ask for a roll call vote on this, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, we'll have a roll call vote. So many delegates as shall be in favor of adding a Section 16 to the Judicial Article, calling for justices of the peace—elections, qualifications, compensation and jurisdiction, as shown on page 8 and 9, vote Yes on the voting machine; so many as opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, we'll close the ballot.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Absent |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Aye |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Nay |
| Bowman | Nay |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Absent |
| Cate | Absent |
| Champoux | Nay |
| Choate | Nay |
| Conover | Aye |
| Cross | Absent |
| Dahood | Aye |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Aye |
| Foster | Nay |
| Furlong | Absent |
| Garlington | Nay |
| Gysler | Aye |
| Habedank | Absent |
| Hanson, R.S. | Aye |
| Hanson, R. | Aye |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Aye |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Absent |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Aye |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Nay |
| McCarvel | Aye |
| McDonough | Nay |
| McKeon | Aye |
| McNeil | Aye |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Aye |

| | |
|---|---|
| Noble | Aye |
| Nutting | Aye |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Aye |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Absent |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Aye |
| Sullivan | Aye |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 47 delegates voting Aye, 45 voting No.

**CHAIRMAN GRAYBILL:** 47 delegates having voted Aye and 45 having voted No, Section 16, as shown on page 8 and 9, is adopted.

Mr. Leuthold, for what purpose do you arise?

**DELEGATE LEUTHOLD:** I'd like to make a motion.

**CHAIRMAN GRAYBILL:** What's the nature of your motion? I have some other motions up here to consider and yours isn't here in writing, but go ahead. What's the nature of your motion?

**DELEGATE LEUTHOLD:** I'd like to move to reconsider our action on killing proposed Section 14 on probate attorneys and—

**CHAIRMAN GRAYBILL:** Mr. Leuthold, you're out of order. We're not ready to proceed with reconsiderations. Now, if the delegates will turn to page—what's the page, Mr.—55—65, there are two unanimous proposals on separate matters presented by the Judiciary Committee.

Mr. Holland. Well, it would be Section 17 and 18, Mr. Holland.

**DELEGATE HOLLAND:** Mr. Chairman, I move that when this committee does arise and report, after having under consideration Section Number 17 and 18—did you say?—Section Number 17, that the same—that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Holland.

**DELEGATE HOLLAND:** This was assigned by the Chair to the Judiciary Committee. It is adopted unanimously in the same language as the previous Constitution, the entire committee having voted that there was no need for any changes.

**CHAIRMAN GRAYBILL:** All right, let's take Section 17, which is Exemption laws. "The Legislative Assembly shall enact liberal homestead and exemption laws." Is there any discussion? (No response) All those in favor of Mr. Holland's motion that when this committee does rise and report, it shall recommend that the same be adopted, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** It's adopted. Now, we'll take Section 18 separately. "Perpetuities. No perpetuities shall be allowed, except for charitable purposes." Is there any discussion of Section 18? (No response) All in favor of Section 18—of Mr. Holland's motion that when this committee does arise and report, that it shall recommend that Section 18 be adopted, please say Aye.

**DELEGATES:** Aye.

**DELEGATE ESKILDSEN:** He didn't make it for 18. He only made it for 17.

**CHAIRMAN GRAYBILL:** I see.

**DELEGATE ESKILDSEN:** I move that when this committee does arise and report, after having had under consideration Section 18, that the same be adopted.

**CHAIRMAN GRAYBILL:** Very well—on Mr. Eskildsen's motion that perpetuities be adopted when the committee does arise and report, all in favor say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No. (No response)

**CHAIRMAN GRAYBILL:** It's adopted. Excuse me. Now, the Chair has before it a motion by Mr. Harrington to amend Section 1 and a motion by Mr. Blaylock—or to reconsider Section 1—to reconsider Section 8. If there are other motions to reconsider, get them in writing and send them up to the Chair.

Mr. Harrington, do you think it's necesary now to reconsider Section 1?

**DELEGATE HARRINGTON:** Mr. Chairman, I feel that I can withdraw this at this time, due to the other—

**CHAIRMAN GRAYBILL:** Yours is withdrawn.

Mr. Blaylock, you have a motion to reconsider Section 8?

**DELEGATE BLAYLOCK:** Yes, Mr. Chairman, at line 29.

**CHAIRMAN GRAYBILL:** Page 43 at line 29.

**DELEGATE BLAYLOCK:** Page 43 at line 29.

**CHAIRMAN GRAYBILL:** Mr. Blaylock, do you want to make your motion?

**DELEGATE BLAYLOCK:** Yes. After the word "position"—

**CHAIRMAN GRAYBILL:** No, I want you to make your motion.

**DELEGATE BLAYLOCK:** Oh, I see. I move to reconsider Section 8 at line 29.

**CHAIRMAN GRAYBILL:** Mr. Blaylock, did you vote on the prevailing side?

**DELEGATE BLAYLOCK:** Yes, I did.

**CHAIRMAN GRAYBILL:** All right, having voted on the prevailing side, Mr. Blaylock wishes to amend Section 8, on page 43. And Mr. Blaylock, explain briefly your purpose.

**DELEGATE BLAYLOCK:** My purpose is to allow judges to run for other judicial positions. As it is now—and if you remember, I asked Mr. Berg if they were precluded from doing that, and he said yes. So, on line 29, after the word "position", strike the period and put in a comma and add this language: "but"—have you got it?—"but a judge may file for another judicial position without forfeiture of the judicial position he holds". I'll read the whole thing again: "A judge may file for another judicial position without forfeiture of the judicial position he holds."

**CHAIRMAN GRAYBILL:** I take it, Mr. Blaylock, that it's your position in this proposal that he may not run for a different judicial office than a judicial one, but he may run for a judicial one without forfeit.

**DELEGATE BLAYLOCK:** Yes.

**CHAIRMAN GRAYBILL:** All right, Mr. Blaylock, you've explained that. Do you feel it's necessary to explain it further before we vote on your motion to reconsider?

**DELEGATE BLAYLOCK:** No. I'm perfectly willing to vote on it.

**CHAIRMAN GRAYBILL:** Is there other discussion? (No response) Very well, the motion is whether or not to reconsider Section 8, and particularly the language on lines 28 and 29 on page 43 of Section 8, to allow an amendment such as that outlined by Mr. Blaylock. All those in favor of such motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it.

Mr. Blaylock.

**DELEGATE BLAYLOCK:** I'll be very brief. My feeling on this is that people who have been elected to the State Legislature up here—say they've been elected for four years—if they're in midterm and an election comes up, then they're free to file for another position—say, Congress or for a position in the Executive—and if they lose, they don't forfeit their position, say, as senator, if we're in the bicameral or if we're in the unicameral; position is for four years, they don't forfeit that. Then, if we—in the judicial area, if a judge—a district judge sitting and there's an opening comes up on the Supreme Court and that district judge wishes to try for that position and he's a good judge, why should we preclude him from running if he wants to? So I have voted consistently to allow judges to run to be elected, and I don't think that we should preclude our district judges from their desire to serve on the Montana State Supreme Court.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President, would Mr. Blaylock yield to a question?

**DELEGATE BLAYLOCK:** Yes.

**DELEGATE DAVIS:** Mr. Blaylock, now that we have justice of the peace in the Constitution, we are hopeful that they will be attorneys, too. Would your amendment exclude them from trying to move up in a like manner to the position of District Court judge?

**DELEGATE BLAYLOCK:** No, my—

**DELEGATE DAVIS:** Would they be judge, or would you have to put justice of the peace in there?

**DELEGATE BLAYLOCK:** Well, I would think if they were qualified to serve on the Supreme Court and they hold a judicial position, my language says they would not forfeit the judicial position that they hold.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Would you yield to another question?

**DELEGATE BLAYLOCK:** Yes.

**DELEGATE DAVIS:** I mean a justice of the peace wanting to run for the District Court job, would he have to surrender his position?

**DELEGATE BLAYLOCK:** I wouldn't think so, no.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I can see some difficulty with this. I can see the possibility of what we call the Hugh Adair syndrome. A few years ago, when he was Chief Justice, the job of associate justice became open at a higher rate of pay than what he was getting as Chief Justice, so he even resigned as Chief Justice and ran for associate justice to get the higher pay and eliminated Jimmy Freebourne as a result of it, which may have been good or bad—I take no stand on that. But it seems to me you could get some vendettas going on in that Supreme Court, and the more popular man would wipe out the one he didn't like. I'm not so sure I like it.

**CHAIRMAN GRAYBILL:** Mr. Skari.

**DELEGATE SKARI:** Mr. President, I support Mr. Blaylock on this. I was a little uneasy this morning when we passed over it, and I thought perhaps I didn't fully understand it, but it seems to me that the District judges—the District Court should serve as a training ground for the high court, and it would seem to me to be of great advantage and I support Mr. Blaylock on this.

**CHAIRMAN GRAYBILL:** Mr. Aronow.

**DELEGATE ARONOW:** Mr. Chairman, I rise in support of Mr. Blaylock's motion. I think there is—we should leave an opening for a good judge, a trial judge, to move into the Supreme Court, or if there's a lawyer justice of the peace that has the qualifications, he should be able to move on up to the District Court or even the Supreme Court if he thinks he has a chance to win the election and has the qualifications.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I don't want to prolong this, but I did work with Chet about—with this amendment. He asked me about it. After the vote had been taken. We were both concerned; we both feel that judges should be able—that is, district judges should be able to, if they're capable, be elevated on up to the bench. They probably are the best—qualified timber for the Supreme Court, and it would be a shame to prevent them from doing that.

**CHAIRMAN GRAYBILL:** Very well, the question arises on Mr. Blaylock's motion to amend Section 8, on page 43, by adding to the sentence in line 28 and 29 the following words—the sentence now reads: "Filing for another elective public office results in forfeiture of a judicial position." He wants to put a comma, "but a judge may file for another judicial position without forfeiture of the judicial position he holds." So many as shall be in favor of that amendment, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** It's approved. Mr. Berg, will you make a motion that when this committee does arise and report, after having under consideration Section 8 as amended, that the same be recommended for adoption.

**DELEGATE BERG:** I so move

**CHAIRMAN GRAYBILL:** All in favor, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Section 8 is adopted. Now, Mrs. Mansfield, you have a request up here concerning Section 6, and your request says you move to reconsider our action in killing the amendment of Section 6, page 42. Now, my notes show that Section 6, which begins in the bottom of 41—"terms and pay of judges"—was adopted as is. There was a motion this morning to amend it from "6" to "8" and from "4" to "6" years, and that failed, so I see nothing in Section 6 that isn't adopted. Now, what is your pleasure?
Mrs. Mansfield.

**DELEGATE MANSFIELD:** Mr. President, this is the section on the terms that was killed this morning, and I voted on the prevailing side and I want—wish to reconsider this.

**CHAIRMAN GRAYBILL:** Well, I don't believe Section 6 was killed. Now, somebody can correct me if I'm wrong. What section is it that you're after? I don't see any language—

**DELEGATE MANSFIELD:** It's under—

**CHAIRMAN GRAYBILL:** —the first nine lines of page 42. That was adopted as is this morning.

**DELEGATE MANSFIELD:** Yes, it's line 4, 5, 6 and 7 that we—Mr. Garlington's amendment.

**CHAIRMAN GRAYBILL:** All right, what's the—you want to open Section 6 so that we can consider lines 4, 5, 6 and 7—that's Mr. Garlington's amendment concerning making the Supreme Court "6" to "8" and the District Court "4" to "6". Is that right?

**DELEGATE MANSFIELD:** Yes, Mr. President.

**CHAIRMAN GRAYBILL:** And having voted on the prevailing side, you wish the body to open consideration of Section 6, is that right?

**DELEGATE MANSFIELD:** Yes, Mr. President.

**CHAIRMAN GRAYBILL:** And your purpose is to amend those four lines again?

**DELEGATE MANSFIELD:** Yes, sir.

**CHAIRMAN GRAYBILL:** Does anyone have any question about Mrs. Mansfield's motion to reconsider Section 6? Any debates? (No response) All in favor of reconsidering Section 6, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Noes have it, and the motion fails.

**DELEGATE HARPER:** Mr. Chairman, I call for a division of the house.

**CHAIRMAN GRAYBILL:** All right, we'll use the voting machines. All those in favor, vote Aye; and all opposed, vote No. Have all the delegates voted?
(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?
(No response)

**CHAIRMAN GRAYBILL:** The Chair appears to have been in error, 56 having voted to reconsider and 41 having voted No, it will be reconsidered.
Mrs. Mansfield.

**DELEGATE MANSFIELD:** Mr. President, I'd like to turn it over to Mr. Garlington.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman. I feel we acted hastily this afternoon in considering this matter, and because it has such deep and long-range significance in the judicial structure that we are forging here, I just feel that we should look in our hearts and see whether, really, we are building a sound Judiciary by keeping it under these completely minimum limitations which have been clearly pointed out. And I earnestly request that we take this step, because I think it is completely compatible with our basic goal, which is to construct for the people of Montana for the long-range future, as Mr. Aronow so well pointed out, a court which is really the salvation of the people's rights which we are endeavoring to construct in the rest of this Constitution.

**CHAIRMAN GRAYBILL:** The Chair will ascribe to you, Mr. Garlington, a motion to amend Section 6 by changing the number "6" to "8" on line 5 and by changing number "4" to "6" on line 7 on page 42. That's what we did this afternoon. You will be—I ascribe that motion to you. The sense of the motion is to raise the term of the Supreme Court from 6 to 8 years and the District Court from 4 to 6 years. Is there discussion?

Mrs. Blend.

**DELEGATE BLEND:** I would like to point out to you some cold, hard facts about 8- and 6-year terms in view of the fact that we also voted to pay the campaign expenses of the judges, and I urge you to vote for this amendment to reduce the cost to the citizens on the campaign levels. Thank you.

**CHAIRMAN GRAYBILL:** Mr. McCarvel.

**DELEGATE McCARVEL:** Mr. Chairman, having voted on the prevailing side this morning, I feel that this needed a little more debate; and Mrs. Blend took the words out of my mouth before I got up, because I feel the taxpayer needs a break on this also, so I support the 8 and 6.

**CHAIRMAN GRAYBILL:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, could I offer a substitute motion?

**CHAIRMAN GRAYBILL:** You could.

**DELEGATE SCANLIN:** Eliminate lines 4, 5, 6 and 7, leave lines 8 and 9 to read: "Terms of office for judges shall be provided by law."

**CHAIRMAN GRAYBILL:** Mr. Scanlin's substitute motion is to take the terms of the Supreme Court and District Court judges out of the article and leave the sentence in that says: "Terms of office for other judges shall be provided by law." Do you want to take out the word "other" and say, "Terms of office for judges shall be provided by law"?

**DELEGATE SCANLIN:** That's right, Mr. Chairman.

**CHAIRMAN GRAYBILL:** In other words, Mr. Scanlin's substitute motion would let the Legislature set the terms of office for the Supreme Court, District Court and other judges. Is there discussion?

Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President, could I ask Mr. Scanlin a question?

**CHAIRMAN GRAYBILL:** Mr. Scanlin, will you yield?

**DELEGATE SCANLIN:** I yield, Mr. Chairman.

**DELEGATE ROD HANSON:** Mr. Scanlin, is your purpose here to cut the cost for the taxpayer even further by having the judges elected for life?

**DELEGATE SCANLIN:** I trust the Legislature.

**CHAIRMAN GRAYBILL:** Is there further discussion?

Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, for a long time during this session, I have been noticing a predilection on the part of the membership to pass the buck along all the way. We are going to have a commission do this, a committee do that, and we are washing our hands of it just like Pontius Pilate washed his hands of everything that came before him. I want to say that if you push these judges of the Supreme Court into a place where they are going to sit for 8 years and the district judges for 6 years, some of us are not even going to live out their first term, and the rest of the people are not going to know even who the judges are by the time they come around for election the next time. I think that we're doing the people of Montana a disservice by taking these people away from their control. You elect a man who's on the Supreme Court now—any of them—to another 8-year term and he's had it. (Laughter) I want to tell you, he's not only had it, but the people of Montana have had it. (Laughter) I think that Mr. Scanlin is doing a service to the people of Montana if he can turn this over to the Legislature, just as we're turning almost everything else over to them.

**CHAIRMAN GRAYBILL:** Mr. Aasheim.

**DELEGATE AASHEIM:** Mr. President [Chairman] and delegates, I don't want to talk on Mr. Scanlin's proposal, but if a man is elected judge when he's 60—50—69 years old, in 8 years he'll be—

**CHAIRMAN GRAYBILL:** Mr. Eskildsen, you have the mike.

**DELEGATE ESKILDSEN:** Mr. Chairman, members. I'd just like to point out that when we finally get to voting on Order of Business Number 5, that—and I'm referring to what Mrs. Blend has said—that in order to save a little money, maybe we should pass this for 8 years. I'd just like to point out to you, when we get to Order of Business Number 5, it's very possible, very possible that one particular section that we're going to pour the old money into the campaign fund, might die in this body. It was a pretty close vote. And I imagine that the newspapers will pick this up quite readily, and we'll be getting some little response from home pretty soon about supporting the campaign fund for the poor old judges. So I wouldn't let that be an item that would make my vote change one way or the other. I'd just look at the fact that 8 years is too long as far as I'm concerned.

**CHAIRMAN GRAYBILL:** Mr. Siderius.

**DELEGATE SIDERIUS:** I also think 8 years is a little too long. For instance, if we do not like the judges or if they do—

**CHAIRMAN GRAYBILL:** A little louder.

**DELEGATE SIDERIUS:** —if they do not do what we think they should do, why, we can get rid of them at the end of 6 years.

**CHAIRMAN GRAYBILL:** Mrs. Babcock.

**DELEGATE BABCOCK:** Mr. Chairman, I rise in opposition to this amendment and I would certainly—I did not vote on the prevailing side for the campaign funds, but I would certainly urge that we reconsider that, also, and not use this as an influence on our vote in this issue. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, in connection with Mr. Scanlin's suggestion that we turn this over to the Legislature, I refer to Volume V of our production, which has a number of comparable constitutions, and I find that the ones of Alaska, Hawaii, Michigan, New Jersey, Puerto Rico, and the model, which were the ones that were provided by the preparatory commission as an example for us, all do contain a term proviso for the justices of the Supreme Court. So, it is not the common pattern to buck it over to the Legislature, but to reach a decision on the subject. With respect to the comment that 8 years is too long, I just want to remind the delegates that, based on the experience of the rest of the states around the United States, which I think are not altogether different than Montana, they do not seem to have problems over going to terms that run from 8 on up to 15 years to life. If we timidly reach as far as 8, we will really have not gone too far.

**CHAIRMAN GRAYBILL:** Mr. Choate.

**DELEGATE CHOATE:** Not that it has a lot to do with our Convention, what's being done in North Dakota, but I find in their newly written document they provide 10 years for a Supreme Court justice and 6 on their District Court. I really do think it has some bearing in this Convention, though, that it would give us a better quality of judges, when you consider that he has to seriously consider giving up a practice to run for a term that may be considered, in his opinion, a little short at 6 years, or 4 in the case of a District Judge. Now, I do favor 6 and 8 years on these terms. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** Mr. President [Chairman], I would like to point out that in the North Dakota proposal, they are elected by the people. Here you have a committee that's going to recommend who's going to be judge and then the Governor is going to appoint him and you're not going to get another look at him, as far as you wanting your right to vote, for 8 years or 6 years, as the case may be.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, whatever number we adopt, the question is whether the Legislature ought to do it or the Constitution ought to do it, and I think the Constitution ought to do it and I think we ought to get on with that question.

**CHAIRMAN GRAYBILL:** Very well, the question is on Mr. Scanlin's motion to delete lines 4 through 7, which means deleting the terms of the Supreme Court justice and the District Court justice and saying the terms of office for judges will be as provided by law. So many as are in favor of Mr. Scanlin's motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The motion fails. Now, we're discussing Mr. Garlington's motion to raise Supreme Court judges from "6" to "8" and District Court judges from "4" to "6". Is there further discussion?

Mr. Martin—are you standing, Mr. Martin?

**DELEGATE MARTIN:** No, I'm sorry.

**CHAIRMAN GRAYBILL:** Mr. Eskildsen, were you standing?

**DELEGATE ESKILDSEN:** I ask for a roll call vote.

**CHAIRMAN GRAYBILL:** Very well. So many as are in favor of raising the term of the Supreme Court justices to "8" and the district court justices to "6" in Section 6, please vote Aye; and those opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, take the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Absent |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Nay |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Aye |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson R. | Nay |
| Harbaugh | Nay |
| Harlow | Nay |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Absent |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Aye |
| Mahoney | Nay |

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|---|---|
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Aye |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Aye |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Absent |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Aye |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 49 delegates voting Aye, 48 voting No.

**CHAIRMAN GRAYBILL:** 49 delegates having voted Aye and 48 having voted No, the terms of the Supreme Court judges are now 8 and the District Court judges now 6. Mr. Berg, will you make a motion—or Mr. Holland—will one of you make a motion that we readopt Section 6?

Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I move that this committee, having had under consideration Section 6 of the minority report, as amended, that when it does rise and report, that it pass and adopt and approve the same.

**CHAIRMAN GRAYBILL:** So many as shall be in favor of adopting Section 6, as amended, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The Ayes have it.

**DELEGATE AASHEIM:** Mr. President [Chairman].

**CHAIRMAN GRAYBILL:** Mr. Aasheim, for what purpose do you arise?

**DELEGATE AASHEIM:** I'm rising to reconsider our action in adopting Section 8.

**CHAIRMAN GRAYBILL:** Well, you've got to send it up here in writing to me so that you can get in line. Mr. Conover, would you like to explain what you want to do with Section 16? Section 16 is the justices of the peace, adopted 47 to 45.

Mr. Conover, do you want to make a motion to reconsider Section 16; is that right?

**DELEGATE CONOVER:** Mr. President, having voted on the prevailing side, I would like to make a motion to reconsider Section 16. Thank you, Mr. President.

**CHAIRMAN GRAYBILL:** And what is your purpose in—you may state your purpose for the body, shortly.

**DELEGATE CONOVER:** I voted for this, but my purpose for this was that I feel that, in the general government, that this article come up under this Local Government—that will take care of this.

**CHAIRMAN GRAYBILL:** In other words, if your motion prevails, you will make a motion to delete Section 16; is that right?

**DELEGATE CONOVER:** Yes, sir.

**CHAIRMAN GRAYBILL:** Very well, is there further discussion? (No response) The question arises on the motion of Mr. Conover that we reconsider Section 16, concerning justices of the peace.

**DELEGATE HARRINGTON:** May we have a roll call on that, please?

**CHAIRMAN GRAYBILL:** So many as are in favor of that, please vote Aye on the voting machine; so many as are opposed, vote No.

**DELEGATE BERG:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** Just a minute. Do you want to discuss it?

**DELEGATE BERG:** I want to—I would like to ask Mr. Ask to yield to a question.

**CHAIRMAN GRAYBILL:** All right, we'll cancel the vote. Mr. Clerk, cancel the vote.

**DELEGATE BERG:** Have you included Justices of the Peace in your proposed Local Government section?

**DELEGATE ASK:** No, we have not. We considered that as part of the Judiciary Article, and we never even considered it as I can recall.

**DELEGATE BERG:** But you've considered every other county office?

**DELEGATE ASK:** Yes, including Clerk of the District Court and County Attorneys; we included them.

**DELEGATE BERG:** And would you be willing, then, to include the Justices of the Peace as a county office with the other county offices?

**DELEGATE ASK:** Well, I don't know if I can speak for the committee, but I assume we could consider it at that time.

**DELEGATE BERG:** Thank you.

**CHAIRMAN GRAYBILL:** Very well, the question now arises on a roll call vote on whether or not to reconsider Section 16—Mr. Conover's motion to reconsider Section 16. All those in favor, vote Aye; opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, record the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Absent |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Nay |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Aye |

| | |
|---|---|
| Holland | Nay |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Nay |
| Kelleher | Absent |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Absent |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 55 delegates voting Aye, 41 voting No.

**CHAIRMAN GRAYBILL:** 55 delegates having voted Aye, we will reconsider Section 16.

Mr. Conover.

**DELEGATE CONOVER:** Mr. President, my purpose with this is like—has been mentioned, and if it's possible, I'm for electing a justice of the peace. And if it's possible, I'd like to have it brought up in the Local Government if that can be done, Mr. Ask.

**CHAIRMAN GRAYBILL:** Well, are you making a motion to delete Section 16 as we adopted it?

**DELEGATE CONOVER:** Yes, I want to delete Section 16—all of Section 16.

**CHAIRMAN GRAYBILL:** Very well, the motion is on the deletion of Section 16. Have you got anything—

All right, Mr. Harrington.

**DELEGATE HARRINGTON:** As I see it now, we're going around and around and around; and every vote that we have two or three votes difference, we're going to reconsider. Now, maybe if we come back about an hour or two from now, maybe we can reconsider again. In other words, this last vote was fairly close, so maybe we could come back in another hour for the third time. Now, the only problem we're running into here with this Convention, it seems, is if you pass something the first time and if it's fairly close, the next time we can reverse it. So it's better to lose it the first time and come back and try it for the second time, it seems like. In other words, this seems to be the game plan by some of the delegates here. Now, I oppose the motion by Delegate Conover. I feel that we are putting something off that could be done right now and should be done now. It's part of the judicial system and should be remained part of the judicial system, and I just can't imagine how people on the outside looking at this type of a Convention—we vote for something, then we reject it, then we turn around and vote for it again. Now, we should start making up our minds one way or another—either we're going to accept something or reject it—but this idea of bringing things up over and over and over again—I can't see how we're possibly going to get anywhere with this—not here or outside the Convention when we leave. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Berg.

**DELEGATE BERG:** Mr. Chairman, I think if you put the Justice of the Peace in with the other county offices, you will be treating him, then, equally with every other designated county office. Now, we recognize him as a county officer. We recognize that they are going to be a community officer. We—in the Local Government provisions, there is provisions for options within each community as to how they want to treat or continue these offices. I think the people that live with the Justice of the Peace in their individual areas ought to be able to deal with them there, and I do know that there will be a considerable difference of attitude in an urban community as compared to a rural community. I think this would be simply giving to the people the same right in the treatment of the Justice of the Peace as it would be with any other county office. I think we ought to seriously consider this. I don't know of any reason why we should segregate and designate this purely county, local office from any other office that is contained in Local Government. Now, I recognize that, of course, Justices of the Peace have always been considered judicial offices, and I think they should be, and I think their dignity should be achieved, but I do not believe in making them constitutional offices as we have already done. I recognize now the sense of the Convention to do this, but I think you should put them in the communities where they really belong, just like any other office.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I oppose the motion for the reason that I think the type of magistrate that we now designate Justice of the Peace should stay within the Judiciary. His court is going to represent the lowest level, the most accessible level to the general public. We are going to elevate that particular judge, Justice of the Peace, or magistrate to a level of competency never before experienced in the State of Montana. His jurisdiction is going to be expanded, and the problems that he will solve are going to be problems that have not been presented in Justice Courts in the past. He is going to be part of the judicial system. He is going to be immediately below the District Judge. I assume that, in his wisdom, on occasion, he will seek advice and guidance from the District Court. He is part of that arm of government, and that's where he belongs, and he should stay within the Judiciary system as it's outlined and constructed by this Constitution. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** (Inaudible)

**DELEGATE HOLLAND:** The statement by Mr. Ask that the Local Government would consider putting them in, of course, is—as Mr. Ask well knows—I don't think he intended—this late in the Convention at all. The committee report of Local Government has been completed and forwarded to the Committee of the Whole and now, if I remember correctly, on General Orders. That committee no longer has any power to do anything. There's no Justice of the Peace mentioned in there. I want to speak about Section 16, which this—I can't remember the name, I think it was Section 16, which has been adopted already by this. What we attempted to do is to upgrade the office of JP. We had testimony these JPs were holding court in railroad cars, in their automobiles, on their tractors, anywhere they could find it—someone would be taken before them by a peace officer, and the justice would be dispensed right then and there. We had testimony that these men weren't trained, that they didn't have the proper qualifications for the office. We considered eliminating them completely and decided to upgrade the office. First, to restrict—to make—to lower the number from a minimum of four to a minimum of one but provide that, with qualifications, training—he would have to have such qualifications and training as would be provided by law, by the Legislature, and have a monthly compensation rather than a fee system. And he also would hold his office for four years, and it also in there is—this is provided, that there shall be provided facilities for such justice so that their duties may be performed in a dignified surroundings. We also provide they shall have such original jurisdiction. We also provide that they will not have trial jurisdiction in criminal cases. We provide everything that should be provided in a Judicial Article. Now, I don't know who convinced the delegates here to change their mind, and we're going to suddenly spring over to Oscar Anderson's—take it out of the Judicial Article—take a court out of the Judicial Article; suddenly spring over there—but it's obviously people who don't want a Justice Court, because once we get over to Oscar Anderson where they don't have the proper procedure, someone's going to make an amendment that we add that to county government. It's not a county office; it's a judicial office. You're going to eliminate all the good things this committee has done just because the vote was close and, as Mr. Harrington once says, someone has come up here and decided it was a close vote, and now we're going to get you to change your mind based on what—the question asked of Mr. Ask, could you include it into the Local Government. If this is all the thinking this Convention is going to do, if this is all the qualifications they're going to provide for a JP, then I suggest that they'd better forget about anything about the Judicial Article and just put it all over in Local Government and let the county commissioners set up the whole thing for them. I urge you resist the motion to reconsider.

**CHAIRMAN GRAYBILL:** Mrs. Robinson.

**DELEGATE ROBINSON:** Yes, Mr. President, I rise in support of the motion by Mr. Conover to delete Section 16. It's amazing to me how anyone, if you've read the Judiciary report, Number 14, could arrive at the conclusion that you should lock into a constitution the JP system. It, in detail, goes into what has happened in 31 states and how they have either had to amend their constitution, have a constitutional convention or something so they can get this locked-in JP system out. Since 1945 the Legislature in Montana has been trying to update and revamp the JP system. They have failed thus far. I submit if the JP system is as good as a great many of you think it is, it doesn't need to be locked into the Constitution because the Legislature will continue it. If it's not, leave them free to do something else. In Section 16 we are mandating that there shall be a JP elected in each county. In Section 1 we provided that there shall be a Supreme Court and District Court and any other courts that the Legislature may decide to establish. Okay, look at what you have done. They may establish a system of JP Courts, a system of Small Claims Courts, a system of Magistrate Courts, but they have to have a JP system. Now, if they do not like the JP system, they can create another system. You have left it to the Legislature to establish the qualifications, the jurisdiction, the salary, et cetera, of the JP Courts. If they do not like the JP Courts, we may have a JP elected in each county of the State of Montana receiving $2 a year salary. The qualifications—they may have to be Ph.D.s. I mean, this is unreasonable. You are mandating that they do something, yet you're trying to give them flexibility. The North Dakota Constitution was referred to awhile ago. Their Judicial Article makes no mention of the JP system. It's just inconceivable to me that we should embark on this path that we have been embarking on—no change at all, but keep the status quo. It's just—I just can't believe it.

**CHAIRMAN GRAYBILL:** Mr. Campbell.

**DELEGATE CAMPBELL:** Mr. Chairman, I rise to support Delegate Conover's motion to delete Section 16. As you may know, I am a practicing attorney in Missoula, and I practice before Judge E. Gardner Brownlee, who is a close friend of mine and who has worked more than any judge, any justice, in the state with the justices of the peace. He has had more seminars, and he has written a book that is used by all the justices of the peace, and he certainly has their respect. He, more than any man, has supported the Justices of the Peace, and I have been in close contact with him ever since the Montana Plan was first proposed. He opposed the Montana Plan. I discussed it with him in detail, and I discussed what he felt about deleting references to the Justices of the Peace in the new proposed Constitution. He said that it was his personal opinion that he would favor and that the associations of the Justices of the Peace would, with his strong recommendation, would favor deletion of reference to them in the Constitution without abolishing the office, and letting the Legislature set their qualifications and their continuance. I feel that if this man, who has their respect, can say this—that he believes that this is the right thing to do in the new Constitution—I certainly support him, and I think we should back him up, and I think that anyone who feels this in itself is going to abolish the Justice of the Peace system does not have the faith that E. Gardner Brownlee has in our Legislature, so I strongly urge that we accept Delegate Conover's proposal. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** There is only one statistic. I don't care whether you leave the justices in or out of the Constitution, but I think in all fairness that all of our statistic people forget the fact that in 1961 the people voted on this and left the Justice of the Peace in. So you may ignore them if you want, but they'll let you know how they feel.

**CHAIRMAN GRAYBILL:** Very well. Mr. Harrington, do you wish to close? Wait a minute. Mrs. Reichert.

**DELEGATE REICHERT:** I'd like to reiterate again, it was lost by only 1,178 votes.

But as far as this, I am in favor of deletion, and the reason that reconsideration was made was that eight people were absent from this chamber, and in a vote as close as 47 to 45, I think those who are not here deserve a right to vote.

**CHAIRMAN GRAYBILL:** Mr. Felt.

**DELEGATE FELT:** I avoided discussing this when the question was first before us, but I rise in opposition to the proposal of Delegate Conover. During the earlier debates, someone said no one in their right mind would think that the inferior court system would be abolished, so let's leave it up to the Legislature. Now, there might be some people who would find a flaw in the combination of those two statements, and particularly people from perhaps the jackrabbit counties, where they're not going to have many legislators to represent them. They might say, "That's not exactly the crowd we want to leave this to." And they might think, as has been recently mentioned as an argument supposedly in support of this proposition—we're told the Legislature has wrestled with this problem for years and years and years, trying to bring it up to better standards, and they can't get it done. But now we're saying, "Leave it up to them." Members of the committee—or of the Convention, I say, take a good look at the language that we are particularly voting on and think about our committee system. This came from the majority report of the Committee on the Judiciary. It was given great consideration. It is drafted in a way that I had not thought anyone could propose a modernization of the justice of the peace system in Montana, which lays down a framework and yet leaves sufficient flexibility for the Legislature so that it can use it to the extent that is proper and can substitute something else to the extent that they may need it. I have had the unfortunate experience, too, of trying in the Legislature to improve upon our justice of the peace system and failed, and I tell you, they can bring a lot of heat to bear, sure, on the electorate. They can bring more heat to bear, I'll guarantee you, on the members of the legislative body. They've got them pinned down in one spot where they can cinderize their fire on them, and they can bring it in from all sides. And these things seem to be going pretty good in the Legislature battles, and then all of a sudden the support falls away and you don't get any improvement. If you don't go for this, I can just about tell you that the best hope you'll get will be that either the law school or the bar association will come up with some kind of a proposal, and it probably will not involve the election of the justice of the peace. One to a county? My goodness, I think we're doggone lucky that we had a committee that labored and produced something this admirable and that we now have a chance to reaffirm the decision we made and leave it in the Constitution. It certainly improves our chances of success, and it's a small price to pay if you think it violates something. I earnestly ask you, exercise this openness that we talk about and open your minds now. Look at what's before you and decide whether it's meritorious or not.

**CHAIRMAN GRAYBILL:** Mr. Harrington, do you want to close?

**DELEGATE HARRINGTON:** We've heard that the North Dakotans did something—matter of fact, I think since we've been in this Convention I've heard more about North Dakota than, I think, what we've done ourselves, and I have all the admiration in the world for Judge Brownlee and he feels that this is not the thing to do, but I think it basically comes down to the point that we are writing this Constitution for the people, and I think it all—as we go around the horn on this, you're going to find that the majority of the people throughout the state feel that we should have these Justices of the Peace Courts, and I think that any delegate here will find it through communication with the people back home—they'll find the words "the people's court", "the poor man's court"—all of these names are used. And again I plead the case of the Justice of the Peace Courts, that they remain. We have set up a new type of court. We have put qualifications on them. I can't see why this Convention will turn this down. If we do turn them down, I think we're going to have a little problem with it. Thank you.

**CHAIRMAN GRAYBILL:** Very well, the issue arises on Mr. Conover's motion to reconsider Section 16, which passed, and then upon his motion to delete Section 16 as adopted.

**DELEGATE McNEIL:** I would like to ask for a roll call.

**CHAIRMAN GRAYBILL:** Very well. So many as shall be in favor of deleting Section 16, please vote Aye; so many as shall be opposed, please vote No.

**DELEGATE AASHEIM:** Mr. Chairman.

**CHAIRMAN GRAYBILL:** We are in the middle of a vote, Mr.—for what purpose do you rise?

**DELEGATE AASHEIM:** I'd like to have you explain the motion. I'm not clear.

**CHAIRMAN GRAYBILL:** All right, the motion is that Mr. Conover moves that we delete Section 16. Now, we passed, awhile ago, Section 16 which puts justices of the peace in the Constitution. The motion is to delete that out of the Constitution. If you're in favor of the motion, vote Yes, to delete. If you're against the motion, vote No, to retain it in the Constitution.

**DELEGATE AASHEIM:** You said the motion was also reconsidered, and I thought we had passed on the reconsideration.

**CHAIRMAN GRAYBILL:** We passed the motion to reconsider; and now if you want to vote to delete Section 16, you vote Aye; if you want to vote to leave it in, you vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Very well, tally the vote.

| | |
|---|---|
| Aasheim | Nay |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Aye |
| Arness | Aye |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Aye |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Nay |
| Champoux | Aye |
| Choate | Aye |
| Conover | Aye |
| Cross | Aye |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Nay |
| Eskildsen | Nay |
| Etchart | Nay |
| Felt | Nay |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Aye |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Nay |
| Kelleher | Absent |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Nay |
| Reichert | Aye |

| | |
|---|---|
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Absent |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Aye |
| Van Buskirk | Nay |
| Vermillion | Aye |
| Wagner | Nay |
| Ward | Nay |
| Warden | Aye |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

**CLERK HANSON:** Mr. Chairman, 45 delegates voting Aye, 53 voting No.

**CHAIRMAN GRAYBILL:** 45 delegates having voted Aye, 53 having voted No, the motion fails and Section 16 is retained. Mr. Harrington, do you want to make a motion that when this committee rises and reports, after having under consideration Section 16, the same shall be recommended for adoption?

**DELEGATE HARRINGTON:** Yes, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well. All in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.

(No response)

**CHAIRMAN GRAYBILL:** So ordered.

Now, Mr. Scanlin, you have a motion here to reconsider Section 14. Do you wish to make that motion?

**DELEGATE SCANLIN:** Mr. Chairman, in courtesy to my good friend and new roommate here, having voted on the prevailing side, I wish to reconsider Section 14—Mr. Archie Wilson's proposal on the probate attorney—and I'll just simply call for a roll call vote. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Very well, the motion is by Mr. Scanlin to reconsider Section 14. Now, Section 14 is the probate attorney, which was defeated awhile ago, and Mr. Scanlin, having voted on the prevailing side, wants to reconsider Section 14. He wants a roll call vote. All those in favor of reconsidering Section 14, vote Aye; all those opposed, vote No. Has every delegate voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Please tally the vote.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Absent |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Aye |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Aye |

| | |
|---|---|
| Eskildsen | Aye |
| Etchart | Nay |
| Felt | Nay |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Absent |
| Harbaugh | Nay |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Nay |
| Johnson | Nay |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Absent |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Absent |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Aye |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Aye |
| Simon | Absent |
| Skari | Aye |
| Sparks | Nay |
| Speer | Absent |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Nay |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Nay |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 28 delegates voting Aye; 66 voting No.

**CHAIRMAN GRAYBILL:** 66 delegates having voted No and only 28 Aye, the motion to reconsider Section 14 is defeated.

Mr. Brazier, you have a motion to reconsider Section 2 of—Section 2 we passed this morning, and I'll read it here in a minute, but Mr. Brazier, do you wish to reconsider Section 2?

**DELEGATE BRAZIER:** I do, Mr. President [Chairman]. May I speak on the reasons for my motion?

**CHAIRMAN GRAYBILL:** Well, make your motion first.

**DELEGATE BRAZIER:** Mr. Chairman, having voted on the prevailing side upon the motion to adopt Section 2 of the Judicial Article, as proposed by Mr. Melvin—or was it Mr. Schiltz?—

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE BRAZIER:** —I now move that we reconsider the same.

**CHAIRMAN GRAYBILL:** Very well. Before you speak on it, let me read it to the body, because this is the Judicial Committee proposal that you got—it was the first thing we did this morning. If you'll look in your papers, you'll find it. It says: "Section 2, Supreme Court powers. The Supreme Court has appellate jurisdiction, including jurisdiction to hear and determine writs appropriate to its appellate jurisdiction and original jurisdiction to issue, hear and determine writs of habeas corpus. It has general supervisory control over all other courts. It may make rules governing appellate procedure, rules of practice and procedure for all other courts, and rules of admission to the bar and conduct of its members." Then we added: "Rules of procedure shall be subject to approval or disapproval by the Legislature in either of the two sessions following their promulgation." Mr. Brazier, do you want to explain your purpose in moving to reconsider?

**DELEGATE BRAZIER:** I do, Mr. Chairman. Mr. Chairman and fellow delegates, for your information; if you see merit in my motion to reconsider, I will move that we strike from the provision as adopted that sentence contained on line thereof which reads as follows: "It has general supervisory control over all other courts." Now, the reason that I propose to make this motion is that there have been a number of actions taken by this body in the interim since the adoption of the proposal. To put you back in perspective, you will recall that I quizzed Mr. Schiltz about the intention of the sentence, and Mr. Berg candidly volunteered that it was entirely likely under that sentence that the Supreme Court would exert some function other than the use of a remedial writ. Now, since we have adopted that proposal, and in the adoption of that proposal we have provided for the following functions of the Supreme Court: the use of remedial writs without limitation; and by that I take it to mean that all remedial writs presently recognized by Montana jurisprudence, including the writ of supervisory control, would continue to have viability. We have provided for the creation and administration and modification of judicial districts. We have provided for the temporary assignment of judges within those districts. We have provided for rules governing appellate procedure. We have provided for rules of practice and procedure before courts. We have provided rules of admission to practice, and we have provided for removal and discipline of judges. To complicate the matter somewhat, we have also deleted any mention of clerks of the Supreme Court. Now, I will put it to you: if this court is supposed to have a function under this general supervisory control, the better practice would be to spell it out. If there is to be no function, then the better practice would be to delete that sentence, because there's no reason to have it in there. Thank you, Mr. Chairman. That concludes my remarks.

**CHAIRMAN GRAYBILL:** Very well, Mr. Brazier has made a motion to reconsider Section 2, the purpose being to take out of it the language concerning general supervisory control over other courts by the Supreme Court. So many as shall be in favor of Mr. Brazier's motion to reconsider Section 2, please say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** So many as are opposed, please say No.

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** The reconsideration is defeated. Very well, Mr. Harper and Mr. Burkhardt, you have both moved to reconsider Section 15, which is contained on page 38. That's the campaign expenses bit. Section 15 is on page 38. Mr. Burkhardt and Mr. Harper, which one of you cares to make the motion?

Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. President [Chairman], having voted with the prevailing side and in fairness, because of the closeness of the issue, I move that we reconsider this section, and I'll so move.

Mr. President [Chairman].

**CHAIRMAN GRAYBILL:** Just a minute until I make my note here.

Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. President—

**CHAIRMAN GRAYBILL:** Mr. Burkhardt has moved to reconsider Section 15 on page 38, which is the campaign expenditures section, and has voted on the prevailing side. Mr. Burkhardt, do you wish to explain your motion to reconsider?

**DELEGATE BURKHARDT:** I think I perhaps did in the earlier statement. I'll wait for the vote and then would like to speak to it.

**CHAIRMAN GRAYBILL:** Mr. Davis.

**DELEGATE DAVIS:** When this issue was up before, I made a very gross misstatement of fact, saying that you wouldn't get a shot at these people for six or eight years. I'm very sorry. I didn't vote on it. But I think this is one of the more serious things we've done since we've gathered here, when we're providing campaign expenses to run. I'm sure these offices are attractive enough—we haven't had campaign expenses before, and we've always had plenty of candidates. And I think it would be a mistake to put this in.

**DELEGATE AASHEIM:** Roll call vote.

**CHAIRMAN GRAYBILL:** So many as—there's been a request for a roll call vote on reconsideration of Section 15. So many as are in favor of reconsidering Section 15, please indicate by voting Aye on the voting machine; so many as are opposed, vote No. Have all the delegates voted?

(No response)

**CHAIRMAN GRAYBILL:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN GRAYBILL:** Please take the vote.

| | |
|---|---|
| Aasheim | Aye |
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Aye |
| Arness | Nay |
| Aronow | Nay |
| Artz | Aye |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Aye |
| Bates | Aye |
| Belcher | Aye |
| Berg | Aye |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Absent |
| Conover | Absent |
| Cross | Nay |
| Dahood | Absent |
| Davis | Aye |
| Delaney | Aye |
| Driscoll | Aye |
| Drum | Aye |
| Eck | Aye |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Aye |
| Garlington | Aye |
| Gysler | Aye |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Nay |
| James | Aye |
| Johnson | Aye |
| Joyce | Aye |
| Kamhoot | Aye |
| Kelleher | Absent |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Nay |
| Mansfield | Aye |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Absent |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Absent |
| Skari | Aye |
| Sparks | Aye |
| Speer | Aye |
| Studer | Aye |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Nay |
| Van Buskirk | Aye |
| Vermillion | Aye |

| | |
|---|---|
| Wagner | Aye |
| Ward | Nay |
| Warden | Absent |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Nay |

**CLERK HANSON:** Mr. Chairman, 61 delegates voting Aye, 32 voting No.

**CHAIRMAN GRAYBILL:** 61 delegates having voted Aye and only 32 No, the motion to reconsider carries, and we are now reconsidering Section 15 on page 38.

Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman and fellow delegates, as a way of preparing for going through this Judicial Article, I had a friend—

**CHAIRMAN GRAYBILL:** Mr. Burkhardt, do you want to make a motion?

**DELEGATE BURKHARDT:** Fine. I guess that at this point I would make a motion that we delete this article as it's now contained.

**CHAIRMAN GRAYBILL:** Mr. Burkhardt makes a motion that we delete Section 15. Very well, Mr.—go ahead.

**DELEGATE BURKHARDT:** As a way of preparing for the article as we've been going through it, and recognizing that much of the time I've been over my head in terms of what has been discussed, I had a friend who's had considerable legal experience go through this article and make notes in the margin, and one of his—most of his notes have been very helpful. All of the critical areas we've spent time on he hit pretty much on target, and it was helpful to have his ideas. This particular one, he writes, "It's a good idea. I hope it's well debated before its death." And I submit that if it is a good idea, it can stand the light of day, and this is the time to give it the light of day. I would feel very badly if we nailed the lid down on a coffin of a living possibility; and personally, I don't know if I'm bound to vote as I moved, but I'm going to listen to it debated, if I may, and make that decision after I have heard some further conversation on it. Thank you.

**CHAIRMAN GRAYBILL:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, members of the committee. I've been in politics long enough to know when the handwriting is on the wall, and I just saw it a minute ago. I want to say very briefly that we have given a great deal of lipservice here today about attracting people to the Judiciary. We're going to get these great fellows who are going to run, and I'll tell you what we're going to get to run. We're going to get nobody, because we're going to lock in a bunch of blue-ribbon committee appointed people, and when the contest comes up, which it won't, those same people who got appointed by the blue-ribbon committee are going to get the money. And the poor devil who's down there and says, "I would like to be a judge", and probably has as many or more qualifications than the other fellow, is not going to be able to match him dollar for dollar, and he's going to get whipped. And after about one turn at that, you're not going to have any more candidates on this beautiful plan of Mason Melvin's. You're just not going to have any more candidates. Now, if you want to go back to the same old shoddy system that we've had for years, and I can give you book, chapter and verse on that shoddy system, then you vote to reconsider this thing and kill it, which I think you're going to do anyway; but I'm going to get on record as saying that this shoddy system has incorporated in it such things as candidates who list contributions that have not, in fact, been made by the people to whom they're listed, and I can prove it if I need to. This is the most—I started out by saying this is the most progressive thing that's been in this body to date, and it's going to come some day, and it ought to be in here right now. Thank you, Mr. Chairman.

**CHAIRMAN GRAYBILL:** Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President [Chairman], I rise to oppose the motion to delete this section, and I'll just say briefly that I would just as soon pay a few dollars in my tax bill for this purpose than to pay it in my utility bill and have 22 percent added.

**CHAIRMAN GRAYBILL:** Mr. Dahood.

**DELEGATE DAHOOD:** Mr. Chairman, I'm here for judicial reform. I think we've taken steps in that direction. I think we've improved the Judiciary. I think the people are going to respect us for it, and they are going to appreciate the changes that have been made. One of the great critiques that's been made about the judicial system of Montana, and the one issue that's caused the tremendous debate that's been reflected here to some degree, has been the fact that we've had a locked-in Judiciary by virtue of the fact that they have to spend so much to campaign from one end of the state to the other that only the so-called "big boys" can afford to support them with enough campaign funds so that they can be successful; and as a consequence, being the imperfect human beings that they are, just like the rest of us, subconsciously, at least, it has an effect upon their decision and upon their work in our behalf as part of the highest tribunal of this state. The real answer, now that we have the system that we have adopted, is to follow Delegate Schiltz and make sure that they don't have to go out like traditional beggars and have the people with the deep pocket give them the funds necessary to stay in office, and that way we're all going to get a better quality of justice and get the type of decision that we're entitled to have in the temple of justice. I do have one question for Jack Schiltz, however, that does bother me, and I would ask at this time if Delegate Schiltz will yield for that question?

**CHAIRMAN GRAYBILL:** Mr. Schiltz?

**DELEGATE SCHITZ:** I yield.

**DELEGATE DAHOOD:** Jack, I like the idea, of course. What does concern me—does this proposal provide that anyone that wants to run for judge qualifies for use of the state fund for campaign purposes?

**DELEGATE SCHILTZ:** Only in the general election.

**DELEGATE DAHOOD:** Thank you very much.

(Delegate Aasheim in Chair of Committee of the Whole)

**CHAIRMAN AASHEIM:** Mrs. Blend.

**DELEGATE BLEND:** Mr. Chairman, I rise in opposition to the authorization of campaign funds. Under the guise of using the type of assumption that my friends and fellow lawyers here today have used, I would like to point out that, to me, as a lay person, it opens the door for the citizens to finance the campaign expenditures of the elected Executive officials and of the Legislature, which is something that I do not believe we can overlook. Now that we have taken the word "nonpartisan" out of the Judicial proposal, I think that we are now enabling the judges to circulate among the people to act as campaign candidates and to operate within the party system, and I object to the proposition of providing campaign funds.

**CHAIRMAN AASHEIM:** Mr. Harlow, you wanted to rise?

**DELEGATE HARLOW:** Mr. Chairman, I support the proposal to delete this. We have heard a lot about assorted relief measures for assorted people—if this isn't a relief measure for lawyers, I never saw one. Why don't we, as Delegate Blend said, allow campaign funds for everyone? This is entirely wrong.

**CHAIRMAN AASHEIM** Mr. Johnson.

**DELEGATE JOHNSON:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Johnson.

**DELEGATE JOHNSON:** I propose a substitute motion for all motions pending. On page 39 on this section—let's see, on line 3, mark—well, it's page 39, on line 3, cross out "appropriate", the third word, and put in "set amount of". And then on line 10, at the end, cross out the word "appropriated"; on line 11, delete the word "and".

**CHAIRMAN AASHIEM:** Mr. Johnson—

**DELEGATE JOHNSON:** Then this section will read: "Campaign expenses. The Legislative Assembly shall set amount of funds for the contested general election campaign expenses of candidates for the offices of justices of the Supreme Court and District Court judges and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the Supreme Court or District Court judge, nor any person or persons in his or her behalf, shall expend money in a campaign for the office in excess of the amount authorized by the Legislative Assembly." This would equalize the poor man and the rich man and the rich clubs and the poor clubs and, I think, is a start toward the proper type of campaign expenditure in the State of Montana.

**CHAIRMAN AASHEIM:** Mr. Johnson, will you send up your amendments. Any discussion on the amendment of Mr. Johnson?

Mr. Graybill.

**DELEGATE GRAYBILL:** Mr. President [Chairman], the amendment of Mr. Johnson goes halfway, but I would like to speak to you seriously about what I think is the true import of Section 15. Now, you people are worried about the public treasury having to pay the expenses of some candidates. In the first place, the amount that the public treasury would pay would be set by the Legislature, and while it might err on the side of setting it too low, I don't think it would spend too much of our money. The truth of the matter is that in campaigns for judge and for chief—and for justice of the Supreme Court, great sums of money are expended every time there is a contest. These sums of money come from interested clients. Now, a judge—a person who's running for office—does not go around—a judge that's running for office does not go around and get a dollar here and a dollar there like someone running for the Legislature. The people that run for justice of this Supreme Court get large sums of money paid to them, and they get it paid to them by people who have important cases commonly before the courts. Now, you figure out who that is; and these people put up large sums of money. I don't want to interrogate Mr. Schiltz, but I can tell you that Mr. Schiltz didn't spend 5,000 or 10,000. I can tell you that in his behalf, moneys that he collected, probably closer to 50,000 was spent; and on behalf of his opponents, I can tell you that probably more than that was spent. I know what a statewide campaign costs, and you don't buy those kind of offices or run for them for that small amount of money. Now, the whole issue is are we going to let the Judiciary continue to get its money to run for contested Supreme Court offices by getting it from big court corporations and concerns who have a lot of litigation in the Supreme Court? If we are, then kill Section 15. But if you're concerned, as Mr. Schiltz is and as several of us are, that the Supreme Court ought to be a place where the few clients who use it a lot ought not to be able to contribute large sums to a Supreme Court candidate, then you'd better vote for this or you'd better vote at least for Mr. Johnson's amendment, because that's the only way and the last chance, probably, you're ever going to have to straighten that situation out. The idea that this is a lawyers' relief bill is nonsense. The people that it's going to relieve is the common people who have to go to that Supreme Court occasionally against some major interest who is there constantly. If you have to do that, this is your last chance to contribute to somebody's campaign and make it pay, because if you don't do it now, you're just not going to be able to contribute enough to ever overcome the money that's going to be put up against you by those who do go often enough and who do have the wherewithal to pay. So you decide what you want to do, but here's a chance to reform our judicial system at the Supreme Court level in a major way.

**CHAIRMAN AASHEIM:** Any further discussion on Johnson's proposal?

Mrs. Payne.

**DELEGATE PAYNE:** May I ask Mr. Johnson a question?

**DELEGATE JOHNSON:** I yield.

**DELEGATE PAYNE:** I'm wondering how—you know, what kind of a law will you pass to see that they don't spend more than the set amount? You know, right now, when people run for the Legislature, they can spend what—a $150? And then they can have as many clubs as they need to. What would you—you know, what else would you put in here to see that they only spent the set amount?

**DELEGATE JOHNSON:** Well, that takes a little research, I'm sure, but I do not have a set amount at the moment. I think that in answer to that question, that—

**DELEGATE PAYNE:** Yes, but how much—

**DELEGATE JOHNSON:** —any amount set would be okay because they'd all have an equal chance—

**CHAIRMAN AASHEIM:** Please direct your questions to the Chair, please.

**DELEGATE PAYNE:** Well, he hasn't answered my question. What I wanted to find out is, what could you put in here so that whoever was running for office would only spend that amount of money?

**CHAIRMAN AASHEIM:** Will you yield, Mr. Johnson?

**DELEGATE JOHNSON:** Yes, I yield, Mr. Chairman. I would have that just put "as prescribed by law"; that's whatever the amount the Legislature would set up. It would have to be a reasonable amount. It would be equal for every[illegible].

**DELEGATE PAYNE:** Mr. Chairman, I think Mr. Schiltz wants to say something. Did you want to answer that question?

**DELEGATE SCHILTZ:** I can answer it very simply. Obviously, Mr. Johnson hasn't taken a look at it. It says, "No candidate for the Supreme Court or District Court, nor any person or persons on his or her behalf, shall expend money on a campaign for the office in excess of the amount"—and, as Mr. Johnson has it, in excess of the amount authorized by the Legislature.

**CHAIRMAN AASHEIM:** Any further discussion on Mr. Johnson's proposal?
Mr. Brazier.

**DELEGATE BRAZIER:** Mr. Chairman. As a matter of information, is a motion to amend in order at this time?

**CHAIRMAN AASHEIM:** What did you want to amend, Mr. Brazier?

**DELEGATE BRAZIER:** In substance, I wanted to amend by striking out the reference to District Court judges. It seems that all of our attention is directed at the Supreme Court judge race, and by deleting District Court judges, we might make it more palatable to those who might otherwise be opposed.

**CHAIRMAN AASHEIM:** Mr. Brazier, I believe you should amend Mr. Johnson's amendment at this time.

**DELEGATE BRAZIER:** All right. Then, accordingly, I move to amend Mr. Johnson's motion by striking from line 5 on page 39, after the word "Supreme Court", the three words "and District Court"; and, further, by striking from line 8 on page 39, after the words "Supreme Court", the words "or District Court judge comma".

**CHAIRMAN AASHEIM:** All right, Mr. Brazier.

**DELEGATE BRAZIER:** I submit my motion without argument. I think my previous comments speak for themselves.

**CHAIRMAN AASHEIM:** Any further discussion on Mr. Brazier's amendments?
Mrs. Babcock.

**DELEGATE BABCOCK:** Would a motion to pass for the day be in order?

**CHAIRMAN AASHEIM:** Yes, it would.

**DELEGATE BABCOCK:** I'd like to pass this for the day and give this Convention a chance to think about this overnight.

**CHAIRMAN AASHEIM:** I believe you should pass until 9 o'clock tomorrow—

**DELEGATE BABCOCK:** Until 9 o'clock tomorrow morning.

**CHAIRMAN AASHEIM:** The motion has been made to pass consideration of this—amendment, was it, Mrs. Babcock?

**DELEGATE BABCOCK:** Amendment, whatever is in order.

**CHAIRMAN AASHEIM:** I believe the motion would be, then, to pass consideration until 9 o'clock—the reconsideration and amendments to Section 15. As many as are in favor of the motion, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Contrary?

**DELEGATES:** No.

**CHAIRMAN AASHEIM:** The motion is lost. We are now back to Mr. Brazier's amendment. As many as are in favor of—
Mr. Schiltz.

**DELEGATE SCHILTZ:** I resist Mr. Brazier's amendment. I think what applies to one court applies to another. What we're after is to get the best possible candidates we can get for any judicial office.

**CHAIRMAN AASHEIM:** Mrs. Bates, are you talking on Mr. Brazier's amendment?

**DELEGATE BATES:** Yes, Mr. President [Chairman].

**CHAIRMAN AASHEIM:** All right.

**DELEGATE BATES:** As far as District Courts or Supreme Courts, I can't see any difference. I feel that this is something that should be—the entire section should be deleted. It is a statutory matter. What if the Legislature fails to appropriate one cent? It is absolutely verbiage, and I think it should not be in the Constitution. If we can't do it for all the candidates, including the Governor and all the rest of the candidates, why, I don't feel we should do it just for Supreme Court. Thank you.

**CHAIRMAN AASHEIM:** Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman, would Mr. Schiltz yield to a question?

**CHAIRMAN AASHEIM:** Will you yield, Mr. Schiltz?

**DELEGATE SCHILTZ:** Yes, I yield.

**DELEGATE SCANLIN:** Now that—Mr. Schiltz. Mr. Chairman, now that we have the poor JPs in, who is going to pay for their campaign?

**DELEGATE SCHILTZ:** That is covered—

**CHAIRMAN AASHEIM:** Mr. Schiltz, will you answer that?

**DELEGATE SCHILTZ:** That isn't covered by Section 15.

**CHAIRMAN AASHEIM:** Are you ready to vote on Mr. Brazier's—
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman, when I came over here, I thought there was three parts of government. I thought there was the Legislative, the Executive, and also the Judiciary. But I'm beginning to believe that we only have the Judiciary. If we haven't put every emphasis on the Judiciary since I've been here, I'm mistaken in what I've learned. I think it's very important, if we're going to set up a fund like this to take care of the judges, for the simple reason that we give—we can get "honester" judges or judges that are not obligated to anybody, I say we ought to do this for the Governor especially. If there's another branch of government we need to have independent so that he can be absolutely honest and not be obligated to anybody, then I think the Governor should have a fund, too. Now, then, we come to the other branch of government, the Legislature. What about the poor legislator? Why not give him a few dollars to campaign on, too? Do the judges receive such poor salaries and such a poor retirement plan that they're not able to go out and campaign? I doubt that. I think they can campaign just like every other candidate does. When you go into politics, when you look for political office, then you got to expect to find your own campaign funds and to finance it yourself. That's the way I always did. I don't think we should do anything for the Judiciary that we don't do for the Legislature and, especially, that we don't do for the Governor.

**CHAIRMAN AASHEIM:** Mr. Brazier, do you want to—Mr. Johnson, do you want to talk on Mr. Brazier's motion to amend?

**DELEGATE JOHNSON:** I close.

**CHAIRMAN AASHEIM:** Mr. Brazier, do you want to close?

**DELEGATE BRAZIER:** I do, Mr. Chairman.

**CHAIRMAN AASHEIM:** You may close.

**DELEGATE BRAZIER:** In response to Mr. Eskildsen's comments, I would merely point out that there is a distinction between those candidates for judicial offices and the others he mentioned and that is that, at least by custom and practice, those running for judicial office run in a nonpartisan capacity, and I think we've gone into that in sufficient depth. With respect to my motion, I was merely trying to be helpful, and it's made in recognition of the fact, as you have been enlightened, that in a good number of contests for the District Court—or elections for the District Court, there are no contests; and when the voters back home start contemplating what kind of a package we're handing them so far as expense is concerned, they're going to give thought to 30 or 40 District Court judges, and it may seem a little too much to swallow in one chunk, one bite; whereas, if we limit it to the office that is critical and does set the policy and does set the precedent, it might be a little more acceptable. Mr. Chairman, I would ask for a roll call vote and ask for seconds.

**CHAIRMAN AASHEIM:** Mr. Berthelson, for what purpose do you rise?

**DELEGATE BERTHELSON:** Would Mr. Graybill yield to a question?

**CHAIRMAN AASHEIM:** Mr. Graybill, will you yield?

**DELEGATE GRAYBILL:** Yes, I'll yield.

**DELEGATE BERTHELSON:** Mr. Graybill, does Section 15, as amended, solve the problem you so eloquently laid out for us up here, as amended on page 39 by Mr. Johnson? Will that accomplish the same thing you had in mind?

**DELEGATE GRAYBILL:** I think that as far as I'm concerned, if we pass 38—or, if we pass Section 15 in any form, it will be an improvement. As far as I'm concerned, we don't need the District Courts in there, but it would certainly be well—it would be fine if they were in there. I would prefer not to have the Legislature set the amount. That still allows whatever—suppose the Legislature set a hundred thousand dollars, that still allows the judge to get his hundred thousand dollars, and that makes it awful hard for the man that's running against him to get his hundred thousand. So I would prefer it to be appropriated and limited to the Supreme Court, as Mr. Brazier says, to make it less expensive; but I think if we pass it in any of the three forms, we will have accomplished a reform.

**DELEGATE BERTHELSON:** Thank you.

**CHAIRMAN AASHEIM:** We have—Mr. Brazier closed on his motion.

For what purpose do you arise, Mrs. Babcock?

**DELEGATE BABCOCK:** To ask Mr. Brazier a question.

**CHAIRMAN AASHEIM:** Mr. Brazier, do you want to answer a question?

**DELEGATE BRAZIER:** I may but not necessarily shall.

**DELEGATE BABCOCK:** As I recall, they deleted the part in the article causing judges to be partisan. Didn't we decide that they'd be—that they should be partisan?

**DELEGATE BRAZIER:** No, we decided not to lock that in, and my comments, my choice of words, that this has been the custom in practice and tradition were in recognition of the fact that that's the way it has been and presumably that's the way it will be in the foreseeable future.

**CHAIRMAN AASHEIM:** For what purpose do you arise, Mr. Johnson?

**DELEGATE JOHNSON:** Mr. Chairman, for a point of clarification.

**CHAIRMAN AASHEIM:** All right, what is it? What is your question?

**DELEGATE JOHNSON:** Well, I don't have a question; but I'm going to have to clarify something here, because I understand from—the remarks here to my amendment lead me to believe you do not understand it. You see, I moved—and it would have a bearing on Mr. Brazier's motion, I'm sure. I had no intentions of having appropriations made for these people. It was to delete the part about the appropriation, that the Legislature was to name the amount that they were allowed, so there's no appropriation by the government. This won't cost the taxpayers anything. This is set and controlled by the Legislature, setting a precedent for the amount of money spent on candidate campaigns, et cetera. Is that clear now, please? Yes, it's to limit the amount of money they're going to spend, and those words I put in there would do that, and it puts it equal for everybody, rich and poor alike.

**CHAIRMAN AASHEIM:** Mr. Cate.

**DELEGATE CATE:** A point of clarification. Now, if I understand our procedure correctly, if I vote for Mr. Brazier's amendment, which is an amendment to Mr. Johnson's, that I am voting for eliminating appropriations and simply having the matter set by the Legislature as to the amount that you can spend for Supreme Court campaign; is that correct?

**CHAIRMAN AASHEIM:** Mr. Brazier, will you again state your amendment? On page 39, is it?

**DELEGATE BRAZIER:** Well, after being advised by Mr. Johnson on what the substance of his motion was, I think I'd rather make my motion to amend apply if his motion is defeated. I would renew it. I'll withdraw it at this time and renew it at a more appropriate time.

**CHAIRMAN AASHEIM:** Well, Mr. Brazier has asked to withdraw his motion—or to amend. Without objection, that will be withdrawn, so we are then back to Mr. Johnson's amendment. And does anyone want it read again to clarify it?

Mrs. Babcock.

**DELEGATE BABCOCK:** I'd like to have it printed and spread upon the desks so we can study it tomorrow morning at 9 o'clock.

**CHAIRMAN AASHEIM:** You'd better make a motion then, Mrs. Babcock, that we pass consideration again.

**DELEGATE BABCOCK:** I so move.

**CHAIRMAN AASHEIM:** A motion has been made that we pass consideration of the amendment to Section 15 until 9 o'clock tomorrow morning. As many as are in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Opposed?

**DELEGATES:** No.

**CHAIRMAN AASHEIM:** The motion is lost. All right, we're on Mr. Johnson's motion to amend Section 15, and the way I understand this motion is, on page 19, line 3, to delete "appropriate" and insert "amount of". Is that correct? And in line 10, delete "appropriated"; and in line 11, delete "and".

Is that correct, Mr. Johnson?

**DELEGATE JOHNSON:** That is correct.

**CHAIRMAN AASHEIM:** Any further discussion?

Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, members of the committee. I want to be very clear, because there seems to be just a little bit of misunderstanding—that Mr. Graybill put his finger on it. The Legislature can set that figure high enough so that we're back in the same old soup. I think Mr. Johnson anticipates that the Legislature will set it very low, but we can't be sure that they will. So, if the Legislature picked a figure of $50,000, which is not unrealistic, then we're right back where we were.

**CHAIRMAN AASHEIM:** Mr. Heliker, did you want to comment? Did you stand?

**DELEGATE HELIKER:** (Inaudible)

**CHAIRMAN AASHEIM:** Mr. Champoux.

**DELEGATE CHAMPOUX:** I'd like to direct a question, if I may, at Mr. Johnson, if he will yield, please.

**CHAIRMAN AASHEIM:** Mr. Johnson, will you yield?

**DELEGATE JOHNSON:** Yes, I'll yield.

**DELEGATE CHAMPOUX:** Mr. Johnson, if we set the amount, what do we do when we regulate the amount? You see, you've left in the word "regulate the amount" and I—you know,—I'm just wondering—is there a difference?

**DELEGATE JOHNSON:** Well, I presume—well, I hadn't thought about that, to tell you the truth; no. What I'm trying to do here is set [an] amount that is fair and equitable in a campaign.

**DELEGATE CHAMPOUX:** Well, I think if you want to clarify it, maybe you should delete that. If you'd—you know, whatever you'd want.

**DELEGATE JOHNSON:** Yes, I would agree to—

**CHAIRMAN AASHEIM:** Mr. Johnson, do you care to comment on that?

**DELEGATE JOHNSON:** Well, I would agree to, Mr. Chairman—to delete that word "regulate".

**CHAIRMAN AASHEIM:** To delete what word, did you say, Mr. Johnson?

**DELEGATE JOHNSON:** Well, he said there's the word "regulate" in there—I haven't found it yet (Laughter), but I'd sure be happy to delete it. It's on line 6.

**CHAIRMAN AASHEIM:** The words "regulating", on line 6. Do you want to move to amend that, Mr. Johnson?

**DELEGATE JOHNSON:** Well, Mr. Chairman, I just—I don't know just how much I would have to delete in order to make any sense to it.

**CHAIRMAN AASHEIM:** Well, I would recommend that you maybe think about it a minute and—while we continue the discussion.

**DELEGATE JOHNSON:** Thank you.

**CHAIRMAN AASHEIM:** Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I wish to direct an inquiry to Delegate Johnson, so I don't want to interrupt him; so I'll hold up a minute while he does that and then come back, if I may.

**CHAIRMAN AASHEIM:** Any other discussion on Mr. Johnson's amendment?

Mr. Drum.

**DELEGATE DRUM:** Mr. Chairman, I would like to rise to oppose Mr. Johnson's amendment to support the deletion of Section 15; and I'd like to make a couple of points, rather reluctantly, that have not come up as yet. I think one point that I'd like to make is that it looks like we're moving rather rapidly into an area that there is some need for relief. However, the relief looks like it may become kind of complicated down the road. Now, the wording here is—"nor any person or persons on his or her behalf". We haven't considered what effect a club would have. Is a club a person? Say we appropriate so much money for the expenditure of a person running for this position. Perhaps a club would be away from the law, and he could go ahead and raise any other amount that he'd like to and spend more than his opponent. Another point that I'd like to make is that running for the office of Supreme Court could be considered pretty good advertising for a member of the legal profession. It may have some side benefits that offset the cost of seeking that office. And the third thought that I have, that runs through my mind, there may be a set of circumstances where a person may say to himself, "I think I would like to run for Governor two years hence or perhaps at a later time. I don't have a very good chance of becoming the Supreme Court associate justice or even the Chief Justice, however the case may be; but I think I'll run for that job, because it's going to give me some good statewide exposure and maybe there'll be some carryover effect at a later time." Well, this really is subsidizing a lawyer's effort to become Governor, and I think we are giving him an unfair advantage which we are not giving a farmer, a rancher, a fertilizer salesman, or whoever may wish to run for Governor at a later time. So, even though I sympathize with the thought that was presented by Delegate Graybill and I certainly sympathize with Mr. Schiltz, I feel that at this time we may be acting rather hastily and creating some problems that we don't recognize at this point.

**CHAIRMAN AASHEIM:** Discussion is certainly in order—any discussion on this main section is in order. However, I would like to dispose of this motion to amend, and you will still have an opportunity to talk on the original motion.

Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, I'd like to direct a question to Delegate Johnson.

**CHAIRMAN AASHEIM:** Mr. Johnson, will you yield?

**DELEGATE JOHNSON:** I'll yield.

**DELEGATE ROMNEY:** Torrey, on line 10 there, where you took out the word "appropriated", and the next line, the word "and" and left "authorized"—what do you understand by authorizes? What does it mean to you? Does it mean that they can go ahead and do that much, but there's no money involved?

**DELEGATE JOHNSON:** Well, that word "authorized" there, Mr. Romney, I take to mean that's an amount sanctioned or agreed upon as a fair amount. It's—

**DELEGATE ROMNEY:** You said that—

**DELEGATE JOHNSON:** It's not an appropriation. I see what you mean, that authorized could be construed to mean that the Legislature might appropriate it.

**DELEGATE ROMNEY:** Mr. Chairman, I—

**DELEGATE JOHNSON:** I didn't mean that.

**CHAIRMAN AASHEIM:** Mr. Romney.

**DELEGATE ROMNEY:** That is what I meant. You said that—I believe in your previous discussion, that there would be no money involved, it wouldn't cost the state anything. Is that correct?

**CHAIRMAN AASHEIM:** Will you yield, Mr. Johnson?

**DELEGATE JOHNSON:** Yes, I yield, and that is correct.

**DELEGATE ROMNEY:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Romney.

**DELEGATE ROMNEY:** That being the case, this section has no gas.

**CHAIRMAN AASHEIM:** What are you—I don't understand what you said, Mr. Romney.

**DELEGATE ROMNEY:** Mr. Johnson's reply indicates that this section has no power or effect. It cannot—the candidates for the justices of the Supreme Court or the District Court, if they are included, will get no money. They get an authorization. Well, we already have an authorization in the statutes, in the corrupt practices act. They only allow a certain amount, so I don't see that this is getting anywhere unless the state appropriates some money.

**CHAIRMAN AASHEIM:** Mr. Garlington.

**DELEGATE GARLINGTON:** Mr. Chairman, I would like to suggest that there is a large difficulty in these words saying that no person or persons on his or her behalf shall expend money. There are citizens groups—like, for example, the League of Women Voters—who have very estimable political concern over candidates for public office. There are other groups of one kind or another who feel that they are very interested in the candidacy of some given judicial office, and I only am asking now if consideration shouldn't be given to the fact that we may be reaching this prohibition out so far in its hard constitutional language and reach, that we will inhibit the rights of citizen groups to take an interest in this sort of thing.

**CHAIRMAN AASHEIM:** The Chair would like to say that, if you vote for or against the original motion, you're going to do exactly what you are trying to do with the amendment, so I would recommend that we vote on Mr. Johnson's amendment and continue on and take care of the original motion.

Mrs. Bugbee.

**DELEGATE BUGBEE:** May I make a remark to Mr. Garlington? Mr. Garlington, the League of Women Voters doesn't support candidates, and we have absolutely not one red dime.

**CHAIRMAN AASHEIM:** Are you ready for the motion by Mr. Johnson to amend? Was there a roll call vote asked for on this? A roll call vote has been requested. As many as are in favor of the motion by Mr. Johnson to amend will vote Aye, and those opposed will vote No. Has everyone voted?

(No response)

**CHAIRMAN AASHEIM:** Does anyone wish to change his vote?

(No response)

**CHAIRMAN AASHEIM:** The clerk will close the vote.

| | |
|---|---|
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Nay |
| Babcock | Nay |
| Barnard | Nay |
| Bates | Nay |
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Nay |
| Brazier | Nay |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Nay |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Nay |
| Choate | Absent |
| Conover | Nay |
| Cross | Nay |
| Dahood | Nay |
| Davis | Nay |
| Delaney | Nay |
| Driscoll | Aye |
| Drum | Nay |
| Eck | Nay |
| Erdmann | Nay |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Nay |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Absent |
| Harlow | Nay |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |

| | |
|---|---|
| Jacobsen | Nay |
| James | Nay |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Absent |
| Leuthold | Aye |
| Loendorf | Nay |
| Lorello | Absent |
| Mahoney | Nay |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Nay |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Absent |
| Skari | Nay |
| Sparks | Nay |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Nay |
| Van Buskirk | Nay |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Nay |
| Mr. Chairman | Absent |

**CLERK HANSON:** Mr. Chairman, 6 delegates voting Aye, 87 voting No.

**CHAIRMAN AASHEIM:** 87 having voted No, 6 having voted Aye, the motion is lost.

Mr. Brazier.

**DELEGATE BRAZIER:** Mr. Chairman, I would now reassert my motion to amend, directed at page 38—I believe it's Section 15 of the Judicial Article as presently adopted. Is it necessary for me to give the page—or, I mean, the line number?

**CHAIRMAN AASHEIM:** If you're going to make a motion to amend, I'd like to have—

**DELEGATE BRAZIER:** All right.

**CHAIRMAN AASHEIM:** —the page and the lines.

**DELEGATE BRAZIER:** All right, page 38, line 8; following the words "Supreme Court", I move to strike the three words "and District Court". And, in addition, on page 38 at line 11, following the words "Supreme Court", I move to strike the words "or District Court".

Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Brazier.

**DELEGATE BRAZIER:** I waive further argument. I think what I've already said covers the situation. I retain my right to close, however.

**CHAIRMAN AASHEIM:** Yes. It's entirely up to you people. I can sit here all night if you want to discuss this thing very far.

Mr. Cate.

**DELEGATE CATE:** I sold about 40 tickets to the Judge banquet tonight, which starts at 6:30, and under Loendorf's amendment, I could be sued and taken to the Supreme Court—

**CHAIRMAN AASHEIM:** Right now you're going to be out of order if you aren't going to talk on the amendment.

**DELEGATE CATE:** I'm going to make a nondebatable motion that we recess until 8:30 this evening.

**CHAIRMAN AASHEIM:** All right, as many as are in favor of the motion to recess—until 9:30, did you say?

**DELEGATE CATE:** 8:30.

**CHAIRMAN AASHEIM:** Until 8:30 tonight—as many as are in favor of the motion to recess until 8:30, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN AASHEIM:** Opposed?

**DELEGATES:** No.

**CHAIRMAN AASHEIM:** The motion is lost.
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman.

**CHAIRMAN AASHEIM:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I'd like to ask—is the motion before us right now to delete Section 15 in its entirety?

**CHAIRMAN AASHEIM:** No, it's not. It's to amend Section 15.

**DELEGATE ESKILDSEN:** Well, let me ask you, was the first motion to delete it?

**CHAIRMAN AASHEIM:** Yes.

**DELEGATE ESKILDSEN:** Well then, I don't see how we can amend a section we're deleting. I think we have to vote on whether we're going to delete the whole section or not; and if we don't delete it, then we can go ahead to amend it; but I don't think you can amend a section that you're deleting.

**CHAIRMAN AASHEIM:** I'm doing okay. (Laughter) The Chair has been in error. We have been discussing and amending when we are out of order. The motion was to delete Section 15, and we shall now move—or vote on the motion to delete or not to delete.
Mr. Brazier, for what purpose do you arise?

**DELEGATE BRAZIER:** I just had the help of a parliamentary expert, I guess, Mr. Chairman. This will put it into focus, and I think we can dispose of the whole thing with maybe one more vote or two—not more than two. But I offer a substitute motion that we adopt Section 15 in the form in which I have described it—that is, with the deletion of the references to the District Court judges.

**CHAIRMAN AASHEIM:** Wait a minute, now. What's your substitute motion? (Laughter)

**DELEGATE BRAZIER:** All right— that we retain Section 15 as I amend it. I'll read it for you if you want me to burden the record.

**CHAIRMAN AASHEIM:** Well, will you restate your substitute motion, Mr. Brazier? Will you restate the substitute motion?

**DELEGATE BRAZIER:** I move, as a substitute motion, that we adopt as a provision of the Judicial Article a proposed Section 15, entitled "campaign expenses", which contains the following language: "The Legislative Assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justices of the Supreme Court and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the Supreme Court, nor any person or persons on his or her behalf, shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the Legislative Assembly."

**CHAIRMAN AASHEIM:** Your motion is out of order. (Laughter) For what purpose do you arise, Mr. Martin?

**DELEGATE MARTIN:** A point of order.

**CHAIRMAN AASHEIM:** Point of order. State it.

**DELEGATE MARTIN:** As I understand it, we took the roll call vote on an amendment to Mr. Johnson's motion—

**CHAIRMAN AASHEIM:** Which was out of order.

**DELEGATE MARTIN:** —and we—

**CHAIRMAN AASHEIM:** The amendment was out of order, Mr. Martin.

**DELEGATE MARTIN:** Well, don't we have to dispose of Mr. Johnson's?

**CHAIRMAN AASHEIM:** We did, but it was out of order. (Laughter) We voted practically—6 to 87 but we were out of order discussing Mr. Johnson's amendment and Mr. Brazier's amendment, and now we're back to the motion by Mr. Burkhardt that we delete Section 15.
For what purpose do you arise, Mr. Harper?

**DELEGATE HARPER:** I rise to concur with you that we are right and that we are, right now, only a couple of minutes away from getting ready to adjourn. All we have to do, it seems to me, right now, as I understand it, is vote whether or not to delete Section [illegible]

**CHAIRMAN AASHEIM:** That's right.

**DELEGATE HARPER:** And if we delete Section [illegible] it's done, and if it isn't, then there might be another amendment or two; but I was one of those who, with Mr. Burkhardt—

**CHAIRMAN AASHEIM:** For what purpose are you—what are you talking about now, Mr. Harper?

**DELEGATE HARPER:** I'm going to—

**CHAIRMAN AASHEIM:** We're on the motion to delete.

**DELEGATE HARPER:** That's exactly what I'm on. (Laughter)

**CHAIRMAN AASHEIM:** Okay—

**DELEGATE HARPER:** I was one of the two who arose to suggest that, since the vote was very close—46-45—and both Mr. Burkhardt and I voted for the prevailing side, we moved to reconsider. Mr. Burkhardt's had the time—

**CHAIRMAN AASHEIM:** Mr. Harper, you are out of order.

**DELEGATE HARPER:** No, I'm not. I haven't gotten to the end of my sentence.

**CHAIRMAN AASHEIM:** You are out of order.

**DELEGATE HARPER:** Mr. Chairman, I—

**CHAIRMAN AASHEIM:** If you want to appeal it, fine.

**DELEGATE HARPER:** I do appeal it. I'm trying to tell you what my conclusion is and why I think we ought to defeat it. Now, you tell me what I should say, and I'll say it.

**CHAIRMAN AASHEIM:** The Chair has ruled that you are out of order, and he has appealed the judgment. I ask the assembly to—

**DELEGATE HARPER:** Tell me why I'm out of order.

**CHAIRMAN AASHEIM:** Because we are on the motion to delete.

**DELEGATE HARPER:** And that is what I am speaking on.

**CHAIRMAN AASHEIM:** The Chair wants to know if you are going to recognize his motion.

**UNIDENTIFIED DELEGATE:** He doesn't have a motion.

**CHAIRMAN AASHEIM:** Mr. Harper, I guess you can talk. (Laughter)

**DELEGATE HARPER:** Mr. Burkhardt said, and he spoke for both of us, that we would like to hear more discussion on it. I think I probably speak for Mr. Burkhardt. I think we have heard all the discussion we are going to hear on it on either side, and I think we should now get along with the vote. My conclusion, after the discussion, is that I shall again vote to retain this, because I think it's a good section.

**CHAIRMAN AASHEIM:** For what purpose do you arise, Mr. Habedank?

**DELEGATE HABEDANK:** I desire to speak on this motion to delete, Mr. Chairman.

**CHAIRMAN AASHEIM:** All right.

**DELEGATE HABEDANK:** I'm sorry that Reverend Harper thinks he's heard all the discussion there is on this. I haven't had a chance to be recognized. I would like to call to your attention, in deleting this motion—in deleting this section or leaving it in—that if you leave it in, the evils you are trying to cure may be worse than the pain that you're having. The situation here is, as you read this section, if you leave it in, is that the Legislative Assembly shall appropriate funds for the contested general election. And then you go on to say that "nor any person or persons on his behalf shall spend any money" and so forth. So what does this leave you if you follow this section? You have an appointed Supreme Court justice or district judge. Concededly, there are many people who think they have been put in office by some power that is trying to control them. All right. If they get in office, the only one who can receive money from the Legislature is the person who survives the primary, as I read this section—and the primary election—anyone can run for that job and there is no restriction on the amount of money that can be spent for the person to become successful in the primary against the one who is incumbent and is going into the general election, so that you have placed no restrictions on that. The incumbent has publicity in regard to his office throughout the year or years that he's been in office. He has had his name before the public, and the next step you have put into this is you say to the Legislature, they shall appropriate funds. There is no amount in there. If the Legislature in its wisdom says there shall be $10,000 spent for each candidate—and I submit that this may be well what they shall say—how far would an opponent of an incumbent get in getting his name before the public with an appropriation of this kind? I therefore submit that, as worded, this section is worse than having none, even though we recognize the problem, and I feel that the best that we could do would be to say that the Legislative Assembly may appropriate funds for an election of this sort, but, to put it as we have it, with the restriction that we have, we are creating more problems than we have now.

**CHAIRMAN AASHEIM:** The Chair will advise you now if you vote to retain Section 15, you can then amend it as you see fit, but if it is rejected—that is, if you want to delete Section 15, of course, that kills it.

Mr. Wilson.

**DELEGATE WILSON:** Mr. President, I think we're straying pretty far afield here, and I think that we've left a lot of things up to the Legislature to handle, and I think this is surely a Legislative Article and it should be deleted and left up to the Legislature.

**CHAIRMAN AASHEIM:** Are you ready to vote on the motion?

Mr. Swanberg.

**DELEGATE SWANBERG:** Mr. President [Chairman].

**CHAIRMAN AASHEIM:** Mr. Swanberg.

**DELEGATE SWANBERG:** No doubt, some time in the long-distant past, this same question was debated at length about candidates in general. There must have been, at some time in the past, a general dissatisfaction with large amounts of money being funneled in to one or two candidates for some office, and so the state Legislature passed a law that said they could only spend a certain percentage of their salary to run for this office. What happened? Immediately the club concept came into being. What I'm simply trying to point out here is that this proposal, well-intentioned though it may be, will probably be got around somehow, and the state will be on the hock for the basic campaign expenses, and some candidate will find some way of getting around it. Take the case of a person who, perhaps, wanted to see a certain judge elected and just went ahead on his own. How would you stop him from putting ads in the newspaper? There isn't any way that I can see, under this proposal, that it would stop him from doing that. Or how would you prevent him from hiring a very good public relations expert who, instead of using advertising, used it for getting newspaper articles in the newspaper all over the state? And how would you be able to prove that that was paid for? I submit that the proposal, well-intentioned though it might be, just as Mr. Habedank has stated, is going to create more problems than it will solve.

**CHAIRMAN AASHEIM:** Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I have one more question that I would like to ask of the delegation. Suppose we set this—it should be set at $10,000 or some other figure for a justice, and suppose that a little country attorney decides that he wants to run for this office and he gets his $10,000 and the fellow who is really serious gets his $10,000, and the little justice spends a couple of thousand of that and pockets the $8,000. What's to keep this from happening?

**CHAIRMAN AASHEIM:** Mr. Schiltz, do you want to answer that?

**DELEGATE SCHILTZ:** Well, I'll tell you what will keep this from happening—and that's the Legislature is going to provide the rules, and it's provided in there that the Legislature will provide the rules. In response to your previous arguments about why don't we give some money to the Legislature—the candidates—I hope someday we will, and the Governor and everyone else, and we're going to come to it sooner or later, but in the meantime they have the advantage of running on a partisan ticket. I think we've really—we've said just about all that could be said on this subject. I'm eager for a vote.

**CHAIRMAN AASHEIM:** Mr. James.

**DELEGATE JAMES:** Will Mr. Schiltz yield, Mr. Chairman?

**CHAIRMAN AASHEIM:** Mr. Schiltz?

**DELEGATE SCHILTZ:** Yes, indeed.

**DELEGATE JAMES:** Yes, has this been tried in any other state? I'm not familiar. I've heard of [illegible]. Is it in existence anywhere?

**DELEGATE SCHILTZ:** Not to my knowledge.

**CHAIRMAN AASHEIM:** Mr. Burkhardt, do you want to close?

**DELEGATE BURKHARDT:** Mr. Chairman, I wish that I was more informed with the long history of participation in our court system, because I feel that my concern in doing this was to make sure a fair test had been made of the real sense of the group. And I may just say that it seems to me that, as it stands, Section 15 may deserve some reworking, and for that reason I may vote for it—not because I like it in its current nature, but because maybe it deserves a chance to be worked over in some detail as it stands. Therefore, in fairness, we have a test and I close.

**CHAIRMAN AASHEIM:** I believe a roll call vote was asked for. Is that right?
Mrs. Babcock.

**DELEGATE BABCOCK:** May I ask how it will be worked over if a vote for this is—

**CHAIRMAN AASHEIM:** He closed, Mrs. Babcock. I think you're—

**DELEGATE BABCOCK:** Well, I just want you to explain to me what I'm voting for.

**DELEGATE BURKHARDT:** If you vote against deletion, there may be an opportunity to rework it. If you vote for deletion, then there will not be. And I don't feel that I'm required to vote for deletion, even though I moved in that way.

**DELEGATE BABCOCK:** Well, when would the chance be to work it over?

**CHAIRMAN AASHEIM:** If the motion, Mrs. Babcock, fails to delete, then you'll have an opportunity to amend it. That will depend.
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I was just going to say that, unless we do it right now, depending on how we rise and report makes a difference on what will happen to this article. If we rise and report and we finally report, then it will go to Style and Drafting. If we rise and report and beg leave to sit again, we can talk about it tomorrow, but it depends upon what motion is made there. And, if we delete this now, why, that will be the end of it. If we leave it in, why—but if we rise and finally report, why, that's the last we see of it till we get it back from Style and Drafting or someone makes a motion to put it back on General Orders.

**CHAIRMAN AASHEIM:** Is that clear, Mrs. Babcock? Is that clear now?

**DELEGATE BABCOCK:** (Inaudible)

**CHAIRMAN AASHEIM:** As many as are in favor of the motion to delete will vote Aye, and those opposed will vote No. Has everyone voted?
(No response)

**CHAIRMAN AASHEIM:** Does anyone wish to change his vote?
(No response)

**CHAIRMAN AASHEIM:** The clerk will record the vote.

| | |
|---|---|
| Anderson, J. | Aye |
| Anderson, O. | Aye |
| Arbanas | Nay |
| Arness | Nay |
| Aronow | Nay |
| Artz | Nay |
| Ask | Aye |
| Babcock | Aye |
| Barnard | Nay |
| Bates | Aye |
| Belcher | Aye |
| Berg | Nay |
| Berthelson | Aye |
| Blaylock | Nay |
| Blend | Aye |
| Bowman | Aye |
| Brazier | Aye |
| Brown | Nay |
| Bugbee | Nay |
| Burkhardt | Nay |
| Cain | Aye |
| Campbell | Nay |
| Cate | Nay |
| Champoux | Aye |
| Choate | Absent |
| Conover | Aye |
| Cross | Nay |
| Dahood | Nay |
| Davis | Aye |
| Delaney | Aye |

| | |
|---|---|
| Driscoll | Aye |
| Drum | Aye |
| Eck | Nay |
| Erdmann | Aye |
| Eskildsen | Aye |
| Etchart | Aye |
| Felt | Nay |
| Foster | Nay |
| Furlong | Nay |
| Garlington | Aye |
| Graybill | Nay |
| Gysler | Nay |
| Habedank | Aye |
| Hanson, R.S. | Aye |
| Hanson, R. | Nay |
| Harbaugh | Aye |
| Harlow | Aye |
| Harper | Nay |
| Harrington | Nay |
| Heliker | Nay |
| Holland | Nay |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Aye |
| Joyce | Nay |
| Kamhoot | Aye |
| Kelleher | Absent |
| Leuthold | Aye |
| Loendorf | Aye |
| Lorello | Absent |
| Mahoney | Aye |
| Mansfield | Aye |
| Martin | Aye |
| McCarvel | Nay |
| McDonough | Nay |
| McKeon | Nay |
| McNeil | Nay |
| Melvin | Nay |
| Monroe | Nay |
| Murray | Nay |
| Noble | Aye |
| Nutting | Aye |
| Payne | Aye |
| Pemberton | Aye |
| Rebal | Nay |
| Reichert | Nay |
| Robinson | Nay |
| Roeder | Nay |
| Rollins | Nay |
| Romney | Nay |
| Rygg | Aye |
| Scanlin | Aye |
| Schiltz | Nay |
| Siderius | Nay |
| Simon | Absent |
| Skari | Aye |
| Sparks | Aye |
| Speer | Nay |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Aye |
| Toole | Aye |
| Van Buskirk | Aye |
| Vermillion | Nay |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Aye |
| Woodmansey | Aye |
| Mr. Chairman | Aye |

(President Graybill resumes chairmanship of the Committee of the Whole)

**CLERK HANSON:** Mr. Chairman, 49 delegates voting Aye, 47 voting No.

**CHAIRMAN GRAYBILL:** 49 delegates having voted Aye and 47 No, the section is deleted. Now, ladies and gentlemen—so there's no point in debating it further, I take it. Ladies and gentlemen, we have before us one more motion to reconsider. It's Mr. Aasheim's, on Section 8, page 43.

Mr. Aasheim.

**DELEGATE AASHEIM:** I'm going to withdraw my motion. (Applause)

**CHAIRMAN GRAYBILL:** Very well, are there other motions to delete—other motions to reconsider, rather? (No response) If not, Mr. Eskildsen, will you move that we rise and report?

**DELEGATE ESKILDSEN:** Mr. Chairman—and before I move to rise and report, I don't think there's any section left to reconsider, so we may as well rise and finally report.

**CHAIRMAN GRAYBILL:** Well, let's rise and finally report.

**DELEGATE ESKILDSEN:** So, I move that the committee rise and finally report and refer the Judiciary proposal to Style and Drafting.

**CHAIRMAN GRAYBILL:** The motion is to rise and finally report and refer the Judiciary proposal to Style and Drafting. So many as shall be in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** The motion [illegible]. Now, if you'll wait just a minute while the typist types this up, we'll go into the Convention and we'll do that; and then if you'll wait just a minute, we'll all adjourn and we'll all have an equal chance at dinner.

Mr. Martin, for what purpose do you rise?

**DELEGATE MARTIN:** I apologize, Mr. President [Chairman]. I wonder, while we're waiting for this, if I may, might relate something about a telephone call that I had to Washington, D.C., today?

**CHAIRMAN GRAYBILL:** Yes, you can. Go ahead.

**DELEGATE MARTIN:** It was the pleasure of John Toole, the Vice-President, and myself to talk with Senator Burton K. Wheeler who, Sunday, observed his 90th birthday; and we expressed our congratulations to him; and he went on to say that for his 100th birthday, he hoped there would be no Constitutional Convention and perhaps he might have his 100th birthday celebration in Montana. I think it would be appropriate if the President would write him a letter of congratulations, and I so move.

**CHAIRMAN GRAYBILL:** The motion has been made that the Chairman write a letter to Burton K. Wheeler, congratulating him on his birthday. All in favor, say Aye.

**DELEGATES:** Aye

**CHAIRMAN GRAYBILL:** Opposed, No.
(No response)

**CHAIRMAN GRAYBILL:** Mr. Martin, you'll have to help me get that done tomorrow. Now will the clerk please read the title of the committee report.

**CLERK HANSON:** "February 29, 1972. Mr. President, we your Committee of the Whole, having had under consideration Report Number 5, minority report of the Committee on Judiciary, recommend as follows:—"

**CHAIRMAN GRAYBILL:** Mr. Eskildsen—First of all, the Chair would like to know if anyone wants the Committee of the Whole report read in its entirety?

**DELEGATES:** No.

**CHAIRMAN GRAYBILL:** If so, stand and make yourself known; otherwise we will defer reading the Committee of the Whole report. (Laughter)

Mr. Eskildsen, will you make a motion?

**DELEGATE ESKILDSEN:** I move the committee—I move we adopt the Committee of the Whole report.

**CHAIRMAN GRAYBILL:** The motion is that we adopt the report of the Committee of the Whole. All those in favor, say Aye.

**DELEGATES:** Aye.

**CHAIRMAN GRAYBILL:** Opposed, Nay.
(No response)

**CHAIRMAN GRAYBILL:** The Ayes have it.

(President Graybill in Chair of Convention)

**PRESIDENT GRAYBILL:** On Order of Business Number 11, the Chair would like to call to your attention that you got some yellow sheets—you ought to take them home for your wives, since it affects tomorrow's agenda; that is, they're not going to have a meeting tomorrow, and you ought to let her know that. Secondly, Mrs. Babcock, I think it would not be out of order, would it, if I announced that you're still going to have dinner for us tomorrow night? Third, the Chair would like to announce that my faith in the democratic process is restored. We finished the Judiciary Article in one day. We can start in on the schedule tomorrow morning.

Mr. Eskildsen, do you want to make a motion to adjourn?

**DELEGATE ESKILDSEN:** Mr. President—

**PRESIDENT GRAYBILL:** Just a moment, Mr. Champoux wants to make a motion.

**DELEGATE CHAMPOUX:** May I make an announcement, please, sir?

**PRESIDENT GRAYBILL:** You may make an announcement, yes.

**DELEGATE CHAMPOUX:** Education Committee, in the committee room at 8:30 tomorrow morning, please.

**PRESIDENT GRAYBILL:** Education, at 8:30 tomorrow.

Mr. Schiltz.

**DELEGATE SCHILTZ:** Cut and shoot committee, at 8 o'clock tomorrow morning, as usual.

**PRESIDENT GRAYBILL:** Are there other announcements? (No response)

Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. President, I move that we adjourn until Wednesday, March 1st, 9:00 a.m., 1972.

**PRESIDENT GRAYBILL:** The motion is to adjourn. All in favor, say Aye.

**DELEGATES:** Aye.

**PRESIDENT GRAYBILL:** Opposed, No. (No response)

**PRESIDENT GRAYBILL:** So ordered. Thank you.

(Convention adjourned at 6:50 p.m.)

March, 1, 1972
9:02 a.m.

## Thirty-Fifth Day

Convention Hall
Helena, Montana

**VICE-PRESIDENT BROWN:** The Convention will come to order. If the Convention will come to order and please rise, Mr. Champoux will say the invocation.

**DELEGATE CHAMPOUX:** Lord God of Heaven, who hath so lavishly blessed this land, make us, thy people, to be humble. Keep us ever aware that the good things we enjoy have come from Thee, that Thou didst lend them to us. Impress upon us the knowledge that we are not owners, but stewards. Remind us, lest we become filled with conceit, that one day a reckoning will be required of us. Sanctify our love of country, that our boasting may be turned into humility and our pride into a ministry to men everywhere. Help us to make this God's own country by living like God's own people. Amen.

**VICE-PRESIDENT BROWN:** Can we have the roll? All those present will vote Aye on the voting machine

**CLERK HANSON:** Mr. President, May Delegates Mahoney and Toole be excused, please?

**VICE-PRESIDENT BROWN:** Let the record show they're excused.

**CLERK HANSON:** Delegate Anderson, John; Delegate Aronow; Delegate Babcock; Delegate Berg; Delegate Blaylock; Delegate Bugbee; Delegate Dahood; Delegate Drum; Delegate Foster; Delegate Hanson, Robert S.; Delegate Hanson, Rod; Delegate James; Delegate Kelleher; Delegate Loendorf; Delegate Mansfield; Delegate Roeder; Delegate Speer; Delegate Sullivan.

**VICE-PRESIDENT BROWN:** The record will show that Burkhardt, Berg, Blaylock, Garlington, Loendorf, Roeder and Speer are present. They're in Style and Drafting.

| | |
|---|---|
| Aasheim | Present |
| Anderson, J. | Present |
| Anderson, O. | Present |
| Arbanas | Present |
| Arness | Present |
| Aronow | Absent |
| Artz | Present |
| Ask | Present |
| Babcock | Absent |
| Barnard | Present |
| Bates | Present |
| Belcher | Present |
| Berg | Present |
| Berthelson | Present |
| Blaylock | Present |
| Blend | Absent |
| Bowman | Present |
| Brazier | Present |
| Brown | Present |
| Bugbee | Present |
| Burkhardt | Present |
| Cain | Present |
| Campbell | Present |
| Cate | Present |
| Champoux | Present |
| Choate | Present |
| Conover | Present |
| Cross | Present |
| Dahood | Present |
| Davis | Present |
| Delaney | Present |
| Driscoll | Present |
| Drum | Absent |
| Eck | Present |
| Erdmann | Present |
| Eskildsen | Present |
| Etchart | Present |
| Felt | Present |
| Foster | Present |
| Furlong | Present |
| Garlington | Present |
| Graybill | Absent |
| Gysler | Present |
| Habedank | Present |
| Hanson, R.S. | Present |
| Hanson, R. | Absent |
| Harbaugh | Present |
| Harlow | Present |
| Harper | Present |
| Harrington | Present |
| Heliker | Present |
| Holland | Present |
| Jacobsen | Present |
| James | Absent |
| Johnson | Present |
| Joyce | Present |
| Kamhoot | Present |
| Kelleher | Absent |
| Leuthold | Present |
| Loendorf | Present |
| Lorello | Present |
| Mahoney | Excused |
| Mansfield | Absent |

| | |
|---|---|
| Martin | Present |
| McCarvel | Present |
| McDonough | Present |
| McKeon | Present |
| McNeil | Present |
| Melvin | Present |
| Monroe | Absent |
| Murray | Present |
| Noble | Absent |
| Nutting | Present |
| Payne | Present |
| Pemberton | Present |
| Rebal | Present |
| Reichert | Present |
| Robinson | Present |
| Roeder | Present |
| Rollins | Present |
| Romney | Present |
| Rygg | Present |
| Scanlin | Present |
| Schiltz | Present |
| Siderius | Present |
| Simon | Present |
| Skari | Present |
| Sparks | Present |
| Speer | Present |
| Studer | Present |
| Sullivan | Absent |
| Swanberg | Present |
| Toole | Excused |
| Van Buskirk | Present |
| Vermillion | Present |
| Wagner | Absent |
| Ward | Present |
| Warden | Present |
| Wilson | Present |
| Woodmansey | Present |

[Editor's note: The official Roll Call on file with the Historical Society shows 97 present, 2 excused and 1 absent (Kelleher)]

**CLERK HANSON:** Mr. President, quorum is present.

**VICE-PRESIDENT BROWN:** Report of Standing Committees.

**CLERK HANSON:** None, sir.

**VICE-PRESIDENT BROWN:** Report of Select Committees.

**CLERK HANSON:** None.

**VICE-PRESIDENT BROWN:** Communications.

**CLERK HANSON:** None.

**VICE-PRESIDENT BROWN:** Introduction and Reference of Delegate Proposals.

**CLERK HANSON:** None.

**VICE-PRESIDENT BROWN:** Final Consideration of Proposals.

**CLERK HANSON:** None, sir.

**VICE-PRESIDENT BROWN:** Adoption of Proposed Constitution and Ballot.

**CLERK HANSON:** None.

**VICE-PRESIDENT BROWN:** Motions and Resolutions.

**CLERK HANSON:** None.

**VICE-PRESIDENT BROWN:** Unfinished Business.

Mr. Champoux.

**DELEGATE CHAMPOUX:** Mr. Chairman, fellow delegates. It's my pleasure this morning to introduce to you the pages for this week. Where are the pages? Would they all come forward, please, at this time. Are we on? Okay. All pages up to the front, please. Why don't you all sit down, and then as I call your name, you can stand. Who's going to make the response this morning? Okay, very good. Barry Annala of Great Falls; Clark Christian of Helena; Gail Downey of Kalispell; Sandy Halverson, Kalispell; Margo Hickman of Harlowton; Marcia Holland of Butte; Chris Miller (commonly called Tiff) of Butte; Becky Reber of Helena; Mike Trudeau of Butte; and Tom Zuelke of Miles City. One of the gentlemen there will make the response. Welcome to the Convention.

**UNIDENTIFIED PAGE:** Mr. President and delegates. I'd like to first say that, on behalf of myself and all the other pages—very honored to be here. And that any way we can help, just call us. We'll do anything we can. Thank you.

(Applause)

**VICE-PRESIDENT BROWN:** I'd like to thank the pages for being here. You'll all receive copies of the journal with your names therein.

Thank you, sir.

Number 9, Special Orders of the Day.

**CLERK HANSON:** None

**VICE-PRESIDENT BROWN:** Number 10, General Orders of the Day.

**DELEGATE ARONOW:** Mr. Chairman, I am present.

**VICE-PRESIDENT BROWN:** Will the record show Mr. Aronow present? Rod Hanson present. Dave Drum present. We'll show you present, then. Mrs. Mansfield is shown present.

Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman [Vice-President]. I move that the Convention resolve itself into Committee of the Whole.

**VICE-PRESIDENT BROWN:** You've heard the motion. All in favor, say Aye.

**DELEGATES:** Aye.

**VICE-PRESIDENT BROWN:** Opposed, No.

(No response)

**VICE-PRESIDENT BROWN:** The Ayes have it. Mr. Felt will now take the Chair.

(Committee of the Whole chairmanship assumed by Mr. Felt)

**CLERK HANSON:** "March 1, 1972. The following committee proposals are now on General Orders: Natural Resources, Revenue and Finance, Bill of Rights, Education, Public Health, Local Government, General Government, Style and Drafting Number 1, Style and Drafting Number 2."

**CHAIRMAN FELT:** Members of the committee will please be in order. We have, for our consideration, reports of the Committee on Style and Drafting. The first one deals with suffrage and elections. We'll give you a moment, perhaps, to locate those, in case you don't have them on your desks in a usable form. And I have had no opportunity to review this with the Chairman of the committee, but I'm sure we can get along fine. And if you would like, Mr. Chairman, we could have the clerk read Section 1, or did you wish to make some opening statement, perhaps, since we haven't gone through this?

**DELEGATE SCHILTZ:** Why don't I make the usual motion, and then let's proceed from there?

**CHAIRMAN FELT:** Go ahead.

**DELEGATE SCHILTZ:** Mr. Chairman, I move that when this committee does arise and report, after having had under consideration Style and Drafting Committee Report Number 1, that it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN FELT:** Would you express yourself as to just how much of the proposed article you are embracing within that motion?

**DELEGATE SCHILTZ:** I think, inasmuch as this is the first report of the Style and Drafting Committee, that possibly we can establish a format for this purpose. I think it would—The rules, of course, require that we go through things section by section, but what I would like to do is go through the entire thing and make my comments as we go along. And then, if anybody wants to revert back to one section, we can do it.

**CHAIRMAN FELT:** All right. Let the—I think we'll just have you make your comments, and then you can restate your motion specifically as to what you're embracing within the motion after you have completed your comments.

**DELEGATE SCHILTZ:** All right. Now, if you will all take the report marked "Number 1", on Suffrage and Elections—and it's labelled "addendum". Now, the addendum reads as the proposed article will read when the Convention finally adopts that article. That's without any additions or deletions; that's after all the additions and deletions have been made. Now, then, you won't need to worry about that now because we'll work from the one that's entitled "Number 1", on Suffrage and Elections. If you'll turn to the second page of that, you'll see that the way the material came to Style and Drafting Committee is exactly as it is on this page, except for the strikeouts and the underlines. So, you can tell, if you look at Section 1, that we made no changes whatever. Where we struck out words, we struck through them; and where we supplied new material, we underlined. So, on Section Number 1, "Ballot. All elections by the people shall be by secret ballot", there are no changes. Now, also, when we made any changes—at the back, the last item in this thing will be our comments, which will explain the changes we made. Now, Mr. Chairman, I've got that point. We can either move to adopt Section 1 or we can go through the entire thing.

**CHAIRMAN FELT:** We'll take it section by section, Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman, I move when this committee does arise and report, after having had under consideration Style and Drafting Report Number 1, Section 1, that it recommend the same be adopted.

**CHAIRMAN FELT:** Mr. Schiltz, are your comments that you've already made sufficient for this one?

**DELEGATE SCHILTZ:** We didn't make any changes in Section 1.

**CHAIRMAN FELT:** The question now arises on the motion of Delegate Schiltz that when this committee does arise and report, after having had under consideration Section 1, it recommend the same be adopted. All in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. Section 2.

**DELEGATE SCHILTZ:** Mr. Chairman. Section 2—you will note that we struck out various words, and if you'll look at the comment, you'll see why. We made only grammatical changes, in the interest of brevity and style and without altering any substance whatever in the section.
Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 2 of the Style and Drafting Report Number 1, it recommend the same be adopted.

**CHAIRMAN FELT:** The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 2, that the same be adopted. All in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. Section 3. Let's have the clerk read Section 3, Mr. Schiltz.

**CLERK HANSON:** "Section 3, Elections. The Legislature shall provide, by law, the requirements for residents' registration, absentee voting and administration of elections. It may provide for a system of poll booth registration and shall insure the purity of elections and guard against abuses of the general electoral process." Mr. Chairman, Section 3.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 3 of Style and Drafting Report Number 1, that it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** There are no substantive changes, only language changes.

**CHAIRMAN FELT:** The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 3, it recommend the same be adopted. All in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. Section 4.

**CLERK HANSON:** "Section 4, Eligibility for public office. Any qualified elector is eligible to any public office, except as otherwise provided in this Constitution. The Legislature may provide additional qualifications, but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision." Mr. Chairman, Section 4.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 4 of Style and Drafting Report Number 1, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** You'll note, in the comments as to Section 4, that we deleted language from lines 22 and 23 and only repeated the qualifications set forth in Section 2. The form of lines 25 through 28 was changed to avoid the presence of "except", "subject to", and "provided however" in the same sentence. That's all, Mr. Chairman.

**CHAIRMAN FELT:** The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 4, it recommend the same be adopted. All in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it.

**CLERK HANSON:** "Section 5, Result of elections. In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected." Mr. Chairman, Section 5.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 5 of Style and Drafting Report Number 1, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** You'll note from the comments there that we deleted some material that was superfluous. The words "by the people", in line 29, we left in to assure certainty that elections were political, as opposed to corporate elections, for example. We changed "the highest number of legal votes" to "the largest number", and we struck the word "legal", because a vote is either legal or it's illegal and it isn't a vote if it's illegal. That's all, Mr. Chairman.

**CHAIRMAN FELT:** The question arises on the motion that when this committee does arise and report, after having had under consideration Section 5, it recommend the same be adopted. All in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. Section 6.

**CLERK HANSON:** "Section 6, Privilege from arrest. A qualified elector is privileged from arrest at polling places and in going to and returning from, unless apprehended in the commission of a felony or a breach of the peace." Mr. Chairman, Section 6.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 6 of the Style and Drafting Report Number 1, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Now, here's a point where I want to alert the Convention and the committee. We struck out the language completely which had been incorporated on the motion of Mr. Leuthold, from the present Constitution. We had considerable debate in the Style and Drafting Committee as to what exactly was intended. That particular section of the present Constitution has never been interpreted, probably never will be, but in any case, we thought that the intent of that old section was to protect people from overzealous mayors and sheriffs and national guards and that sort of thing on the day of election. So, if you'll consider the old one, you'll see that somebody who was at large, having committed a felony at some time in the past, was exempt from arrest at the time of the election or near the polling place. So we changed that to read: "A qualified elector is privileged from arrest, unless apprehended in the commission of a felony or a breach of the peace, at the polling place or in going to or returning therefrom." That's the extent of the comment, but I wanted to point out to you that we made a substantial change. We, ourselves, interpreted the meaning.

**CHAIRMAN FELT:** Any discussion? If not, the question arises on the motion that when this committee does arise and report, after having had under consideration Section 6, it recommend the same be adopted. All in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. Members of the committee, we will now proceed immediately to Report Number 2 of the Committee on Style and Drafting, dealing with Constitutional Revision. Mr. Schiltz, if you're prepared now, I believe you can again make a general statement, if you wish to do that, and then we will hear motions.

**DELEGATE SCHILTZ:** All right, Mr. Chairman. You'll see that in this second section, we now have the format that we're going to use from now on. The first part of the report, we print the way the article will read, without having to read over deletions and additions of material. For the purposes of this committee report, we will work, starting at page 5, where we have the material supplied us by the Convention. Will you have the clerk read Section 1.

**CLERK HANSON:** "Section 1. Constitutional Convention. The Legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be a convention to revise, alter or amend this Constitution." Mr. Chairman, Section 1.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 1 of Report Number 2 of the Style and Drafting Committee, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I expect here, for a little while, we're going to have some changes that we've made that possibly the committee does not accede to. We attempted to find out what the committee really intended and, in one or more cases, got memoranda from one or more members of the committee. So at this point, be prepared to get some objections from the committee members or the authors. In Section 1, instead of "the voters", we put in "the qualified electors", to conform with what the committee had done on suffrage and elections. We added titles where they were necessary; used "qualified elector" instead of "legal voter". I think that's the only major change. Let me see; oh, here we are. We struck the words "of the state", because we couldn't figure out anywhere else it might apply. Then we had some problem with whether there shall be an unlimited convention. According to the way the committee interpreted it, a convention is an unlimited convention. If you say "unlimited convention", you then raise the specter of the possibility of a limited convention, which is nowhere defined so far as we could tell. Now, I think I cleared that with Mr. Habedank, and our comments cover that.

**CHAIRMAN FELT:** Mr. Etchart.

**DELEGATE ETCHART:** Mr. Chairman. The General Government Committee had a meeting this morning, and we're in agreement on everything in Section 1 except the word "unlimited". And the reason that Style and Drafting deleted the word "limited" was the reason that the committee had put it in in the first place. The committee felt that there should be no power to call a limited convention; that if a convention is called, it should be an unlimited one. But to go further into the thinking of the committee, I'd like to defer to Delegate Habedank at this time.

**CHAIRMAN FELT:** The gentleman, Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman. Mr. Etchart has set forth succinctly the thinking of the committee. It was our feeling that any time the Legislature and the people of the State of Montana spent the money and had people come in for a convention, that then there should be no question arise but what the Convention itself had the power to change or recommend changes as to any part of the Convention.

**CHAIRMAN FELT:** Mr. Habedank. Could you—if you intend to make a motion, could you move it and then speak on your motion? If you do not wish to, you do not have to, but—

**DELEGATE HABEDANK:** I will. Mr. Chairman, I move that the words—the letter "n" and the word "unlimited"—be reinserted into Section 1 as it appears on line 12, page 5, and on line—I can't find it. Well, that would be a separate motion. I'm referring to Section 1, and it would be in the corresponding section on the corrected copy without the deletions.

**CHAIRMAN FELT:** We'll work from page

**DELEGATE HABEDANK:** All right, fine. The section, as I would have it amended, would read: "The Legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter or amend this Constitution." As Mr. Schiltz has pointed out—

Mr. Chairman.

**CHAIRMAN FELT:** Mr. Habedank.

**DELEGATE HABEDANK:** As Mr. Schiltz has pointed out, by their own interpretation, the fact that the word "unlimited" is in there may prevent the calling of a limited convention. That was the exact intent of the committee, that there should be no limited convention. It is our feeling that the amendment procedures which have been adopted by this Convention take care of any need for limited conventions. You can submit amendments as to a given subject. There is no limit as to the amount on amendments and that any time in the future a convention is called, it should be unlimited and that no one should ever be able to challenge the right of the Convention to tackle any portion of it. Therefore, we recommend that the words "an unlimited" be reinserted.

**CHAIRMAN FELT:** The gentleman, Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. The committee only wants to know what the Convention wants in that connection, and that will be the committee's policy throughout. I do want to say, however, that the committee works from what we hear and see on the floor and from the reports we get. We got led down the primrose path on this one because the committee's comments said that "unlimited" was in the Constitution we're now working with, and we got thrown off the track for a little while. Then we decided that they didn't intend what they meant. But in any case—

Mr. Chairman.

**CHAIRMAN FELT:** Yes, Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 1 of Report Number 2 of the Style and Drafting Committee, it recommend the same be adopted as amended.

**CHAIRMAN FELT:** We have not adopted the amendment as yet, Mr. Schiltz. The question arises on the motion of Delegate Habedank to amend Section 1, line 12, page 5, of our report by inserting—reinserting—the words "an unlimited", which are crossed out on the report which is on your desks. Does anybody feel they need any further explanation of the question? If not, the question now arises on the motion to make this amendment. All those in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.

(No response)

**CHAIRMAN FELT:** The Ayes have it. The clerk will read Section 2.

Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 1, as amended, that it recommend the same be adopted.

**CHAIRMAN FELT:** Yes. The question now arises on the motion of Delegate Schiltz that when the committee does arise and report, after having had under consideration Section 1, as amended, it recommend the same be adopted.

Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Habedank.

**DELEGATE HABEDANK:** I move that this same amendment be made on line—

**CHAIRMAN FELT:** Mr. Habedank, if

you're getting out of Section 1, we'll act on it and then we'll proceed to Section 2.

**DELEGATE HABEDANK:** I thought we had completed Section 1.

**CHAIRMAN FELT:** No. I did act that way, but we have not actually done so. The question now arises on the motion to accept Section 1, as amended. All in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. The clerk will read Section 2.

**CLERK HANSON:** "Section 2, Initiative for constitutional convention, subparagraph 1. The people may, by initiative petition, direct the Secretary of State to submit to the qualified electors the question of whether there shall be a convention to revise, alter or amend this Constitution. The petition shall be signed by at least 10 percent of the qualified electors of the state. The numbers shall include at least 10 percent of the qualified electors, each two-fifths of the legislative districts. Subparagraph 2. The Secretary of State shall certify the filing of the petition in his office and then cause the question to be submitted at the next general election." Mr. Chairman, Section 2.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 2 of Report Number 2 of the Style and Drafting Committee, it recommend the same do pass. Before Mr. Habedank makes his motion to amend, I would like to say that we took up with Mr. Habedank the problem at the bottom of that section, of where that two-thirds shall come. We spelled it out so that there can be no question that—or two-fifths, I guess it is, must come from each of those districts. Otherwise, we only made style and drafting changes. We used the words "qualified electors" instead of "voters of the state", and we changed "must" to "shall", which will run throughout the Constitution. And I think that's all.

**CHAIRMAN FELT:** Members of the committee. Before we proceed, we are in this instance taking up old subsections 1 and 2 at one time here in Section 2. Hereafter, we will be dealing with subsection by subsection. If anyone has any objection now to dealing with both 1 and 2 at the same time, he may say so—change it.

The gentleman, Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman. I move that on line 18, page 5, the words "an unlimited" be reinserted.

**CHAIRMAN FELT:** The question now arises on the motion that when this committee—on the motion to amend Section 2, on page 5, line 18, by reinserting the words "an unlimited". All those in favor of the motion, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it.
Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 2 of Report Number 2 of the Style and Drafting Committee, that it recommend the same be adopted as amended.

**CHAIRMAN FELT:** Members of the committee, the question now arises on the motion that when this committee does arise and report, after having had under consideration Section 2, as amended, it recommend the same be adopted. All in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. The clerk will read Section 3.

**CLERK HANSON:** "Section 3, Periodic session submission. If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the 20th year following the last submission." Mr. Chairman, Section 3.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 3 of Report

Number 2 of the Style and Drafting Committee, it recommend the same do pass.

Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Except for some stylistic changes, we made a significant change here that we took upon ourselves, and it should be explained to the Convention. We added "as provided by law". The problem of the committee was by whom this should be submitted. The section was silent on the subject, and we thought that there should be some provision in there how it should be submitted, so we put "as provided by law", so that the Legislature can take care of that. Otherwise, we conceived that this thing could never be capable of execution. This is a substantive change.

**CHAIRMAN FELT:** Any discussion? If not, the question arises on the motion that when this committee does arise and report, after having had under consideration Section 3, it recommend the same be adopted. All in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.

(No response)

**CHAIRMAN FELT:** The Ayes have it. Section 4.

**CLERK HANSON:** "Section 4, Call a convention. If a majority of those voting on the question answer in the affirmative, the Legislature shall provide for the calling thereof at its next session. The number of delegates to the Convention shall be the same as that of the larger body of the Legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the Legislature. The Legislature shall determine whether delegates may be nominated on a partisan or nonpartisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates."

Mr. Chairman, Section 4.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 4 of Report Number 2 the Style and Drafting Committee, it recommend the same do pass.

Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** These are all stylistic changes and working changes, in order to make the thing read better. I don't think of any problem we may have—that should be called to your attention, other than what you can see, except if you will look at—starting at line 14. At that point, we said "The Legislature shall" instead of "The Legislature may", and then, in the next subclause, we changed "shall" to "may". In fact, you can see we reversed them now. As we got it, it said, "The Legislature may determine whether the delegates shall be elected after nomination". We changed it to, "The Legislature shall determine whether the delegates may be nominated on a partisan or a nonpartisan—". We considered that to be something significant that ought to be done, and if there's any objection the committee should know it and debate it. Otherwise, there are no major changes.

**CHAIRMAN FELT:** Members of the Convention, is there any discussion on Section 4?

Mr. Brazier.

**DELEGATE BRAZIER:** Would the gentleman, Mr. Schiltz, yield to a question?

**DELEGATE SCHILTZ:** I yield.

**DELEGATE BRAZIER:** Directing your attention, Mr. Schiltz, to line 19 on page 6 of your report, where—well, the whole sentence reads: "They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates." Perhaps you could clarify some confusion which arises in my mind, with respect to the language determining the number of delegates.

**DELEGATE SCHILTZ:** Mr. Brazier, we aren't fooling with that, because that's the way we got it. The only thing we did; as that read before, we added "are the members". It said, "They shall be elected at the same place and in the same districts as the legislative body determining the number of delegates." We added, "as are the members of the legislative body". If you had a problem on that, you should have debated it in the Committee of the Whole when this proposition was before the house.

**CHAIRMAN FELT:** Mr. Brazier.

**DELEGATE BRAZIER:** I hate to burden the proceedings of the Convention. Perhaps you could answer the question. I am not sure I heard Mr. Schiltz's last remark. Did he say that it's too late?

**CHAIRMAN FELT:** That was the general tenor of his comments. We're not dealing with matters of substance here.

**DELEGATE BRAZIER:** All right. Thank you, your honor.

**CHAIRMAN FELT:** You can speak again. (Laughter) Members of the Committee, you now have before you the question—the motion—that when this committee does arise and report, after having had under consideration Section 4, it recommend the same be adopted. All in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. Section 5.

**CLERK HANSON:** "Section 5, Convention expenses. The Legislature shall, in the act calling the Convention, designate the day, hour and place of its meeting and fix and provide for the pay of its members and officers and the necessary expenses of the Convention." Mr. Chairman, Section 5.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 5 of Style and Drafting Proposal Number 2, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** There are no changes here that need to be noted. We just changed "Legislative Assembly" to "Legislature", which is going to be the rule throughout; and otherwise, just stylistic changes.

**CHAIRMAN FELT:** Members of the committee, the question now arises on the motion that when this committee does arise and report, after having had under consideration Section 5 of Report Number 2 of the Committee on Style and Drafting it recommend the same be adopted. All in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. Section 6.

**CLERK HANSON:** "Section 6, Oath—vacancies. Before proceeding, the delegates shall take the oath provided in this Constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the Legislature, if not otherwise provided by law." Mr. Chairman, Section 6.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 6 of Style and Drafting Proposal Number 2, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I don't pick up any significant changes here that need to be discussed. I think it's just mostly stylistic.

**CHAIRMAN FELT:** Members of the committee, you now have before you the question on the motion that when this committee does arise and report, after having had under consideration Section 6 of the Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All in favor, signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. Section 7.

**CLERK HANSON:** "Section 7, Convention duties. The Convention shall meet after the election of the delegates and prepare such revisions, alterations or amendments to the Constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection, as a whole or in a separate article for amendments, as determined by the Convention, at an election appointed by the Convention for that purpose, not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration or amendment shall take effect." Mr. Chairman, Section 7.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 7 of Report Number 2 of the Style and Drafting Committee, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** Once again, no changes. Nothing that should be noted; merely style changes.

**CHAIRMAN FELT:** The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 7 of Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. Section 8.

**CLERK HANSON:** "Section 8, Amendment by legislative referendum. Amendments to this Constitution may be proposed by any member of the Legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this Constitution on the first day of July after certification of the election returns, unless the amendment provides otherwise." Mr. Chairman, Section 8.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 8 of the Style and Drafting Report Number 2, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** What we did here, really, was to combine two sections, Sections 8 and 9. We considered that they were the same subject. We changed the heading from "Constitutional amendment by the Legislature" to read "Amendment by legislative referendum". Otherwise, only style changes.

**CHAIRMAN FELT:** The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 8 of Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. The clerk will read subsection 1 of Section 9.

**CLERK HANSON:** "Section 9, Amendment by initiative, subsection 1. The people may also propose constitutional amendments by initiative. Petitions, including the full text of the proposed amendment, shall be signed by at least 10 percent of the qualified electors of the state. The numbers shall include at least 10 percent of the qualified electors in each of the two-fifths of the legislative districts." Mr. Chairman, subsection 1, Section 9.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration subsection 1 of renumbered Section 9 [of] the Committee on Style and

Drafting Committee Report Number 2, it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** You'll note I said this was renumbered 9. In the last one, we combined 8 and 9. The only change we made here of any significance is that the number of signers—we spelled out because of what we had done in Section 2 of this same article.

**CHAIRMAN FELT:** The question arises on the motion that when this committee does arise and report, after having had under consideration subsection 1 of renumbered Section 9, Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.

(No response)

**CHAIRMAN FELT:** The Ayes have it. The clerk will read subsection 2.

**CLERK HANSON:** "Subsection 2. The petition shall be filed with the Secretary of State, who shall check and certify the validity of the signatures thereon. If the petitions are found to have been signed by the required number of electors, the Secretary of State shall cause the amendment to be published, as provided by law, twice each month for two months previous to the next regular statewide election." Mr. Chairman, subsection 2.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration subsection 2 of Section 9, Committee Report Number 2 of the Style and Drafting Committee, it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** We made a change here that we're going to have some trouble with. In the interest of tight styling, we struck the words, on line 12, "caused the same to be checked" and wrote in just "checked". Now, Mr. Habedank advises me that the Secretary of State has no facilities to do that checking, and he may want that language restored.

**CHAIRMAN FELT:** The gentleman, Mr. Habedank.

**DELEGATE HABEDANK:** Mr. Chairman. I move that subsection 2 of Section 9 be amended by putting a period after the word "state" in line 12 and striking all the remaining words, so that the next sentence will read, beginning on line 14, "If the petitions are found".

Mr. Chairman.

**CHAIRMAN FELT:** Mr. Habedank.

**DELEGATE HABEDANK:** First, before I proceed to explain what we've done, I want to commend the Style and Drafting Committee for what I consider one of the finest jobs of revamping English I've seen. If they are as thorough and as consistent in the rest of the Constitution as they've been in the first two articles, I think we will have a model that other states will be copying for years. The change they have made in Section 2 can, in our opinion, cause considerable trouble. The Secretary of State's office has no facilities for checking and certifying petitions. As a practical matter, these are done by the clerks and recorders throughout the state, and then they're filed with the Secretary of State. We feel the amendment will meet this situation and make the words read similarly to what they will read in the petitions on initiative and other matters which are to be filed. We think that this will be adequate and will meet the approval, we hope, of Style and Drafting as they attempt to take words out of the Constitution.

**CHAIRMAN FELT:** The gentleman, Mr. Schiltz.

**DELEGATE SCHILTZ:** Style and Drafting, I'm sure, has no problem on this. On behalf of the committee, I thank Mr. Habedank for his encomium. After I lost my ewe lamb yesterday, this may be all I'm going to get out of this place. (Laughter)

**CHAIRMAN FELT:** Mr. Clerk, would you read the motion before the Convention now.

**CLERK HANSON:** "Mr. Chairman. I move to amend on page 8, subsection 2, of Section 9, beginning on line 12, by placing a period after the word "state" and deleting the remainder of language in line 12, 13, and the first two words in line 14, so that it would read: 'The petition shall be filed with the Secretary of State. If the petitions are found to have been signed by the required number of electors—'"

**CHAIRMAN FELT:** Does everyone feel satisfied that they have the substance of the motion before them? The question now arises on the motion to amend subsection 2 as stated. All in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it.
Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration subsection 2 of Section 9, Report Number 2 of the Style and Drafting Committee, it recommend the same be adopted as amended.

**CHAIRMAN FELT:** Members of the committee. The question arises on the motion that when this committee does arise and report, after having had under consideration subsection 2 of Section 9, Report Number 2, Committee on Style and Drafting, as amended, it recommend the same be adopted. All in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. The clerk will read subsection 3.

**CLERK HANSON:** "Subsection 3. At the election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the Constitution effective the first day of July following its approval, unless the amendment provides otherwise." Mr. Chairman, subsection 3.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration subsection 3 of Section 9 of the Report Number 2 of the Style and Drafting Committee, it recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** There are no significant changes there—only for style.

**CHAIRMAN FELT:** The question now arises on the motion that when this committee does arise and report, after having had under consideration subsection 3 of Section 9 of Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. The clerk will read Section 10.

**CLERK HANSON:** "Section 10, Petition signers. The number of qualified electors required for the filing of any petition provided for in this article shall be determined by the number of votes cast for the Governor in the preceding general election." Mr. Chairman, Section 10.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 10 of Report Number 2 of the Style and Drafting Committee, recommend the same be adopted.
Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** As you will see, we completely rewrote this particular section, and there may be a problem here so far as the committee is concerned. As it reads now, there's no problem with the language; I think that's approved to some extent. As it reads now, the number of votes in this entire article are necessary to make up two-fifths or, wherever it's required, shall be determined by the number of votes cast for Governor in the preceding general election. I don't know if Otto has any trouble with that or not, or if it's all the votes cast for two candidates, or if it's all the votes cast for one candidate. It possibly should be spelled out.

**CHAIRMAN FELT:** A motion would be in order. You moved the adoption, did you not, Mr. Schiltz? Yes, then a substitute motion would be in order.

**DELEGATE HABEDANK:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Habedank.

**DELEGATE HABEDANK:** I move that Section 10 be amended, on line 4 of page 9, by adding, between the words "for" and the word "Governor", the words "the office of", so that line 4 would read: "for the office of Governor in the preceding general election".
Mr. Chairman.

**CHAIRMAN FELT:** Yes, Mr. Habedank.

**DELEGATE HABEDANK:** The committee approves of the rewording of Section 10 as it has been done by the Style and Drafting Committee. However, we feel that if the word just "for Governor" is left in, the comments should show that it is the intention of this Convention that it should be the votes cast for "the office of Governor", rather than just for "Governor". And we feel that in the interest of clarity and to prevent any further questions arising in the future, the three additional words should be in there. We have inserted them elsewhere in like wording in initiative and referendum petitions, so that wherever we have drawn sections for the Constitution, in all instances, it reads "for the office of" rather than just for the position.

**CHAIRMAN FELT:** Is there any further discussion? We have before us the motion to amend—substitute motion—I believe—way it was put, wasn't it, Mr. Habedank? Yours was a substitute motion?

**DELEGATE HABEDANK:** Just a motion to amend.

**CHAIRMAN FELT:** A motion to amend, all right. If there's no further discussion, the question now arises on the motion to amend. We'll have the clerk read the amendment.

**CLERK HANSON:** "Mr. Chairman. I move to amend, on page 9, Section 10, of the Style and Drafting Report Number 2, in line 4, by inserting the words 'the office of' between the words 'Governor' and 'for'."

**CHAIRMAN FELT:** You've heard the amendment. All those in favor of the motion to amend will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. Members of the committee, the question now arises—No.
Mr. Schiltz, perhaps you should restate your motion to adopt, as amended.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 10 of the Style and Drafting Report Number 2, that it recommend the same be adopted as amended.

**CHAIRMAN FELT:** Members of the committee, you now have before you the question that when this committee does arise and report, after having had under consideration Section 10, as amended, of Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All those in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it. The clerk will read Section 11.

**CLERK HANSON:** "Section 11, Submission. If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted on separately." Mr. Chairman, Section 11.

**DELEGATE SCHILTZ:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** I move that when this committee does arise and report, after having had under consideration Section 11 of Style and Drafting Report Number 2, it recommend the same be adopted.

Mr. Chairman.

**CHAIRMAN FELT:** Mr. Schiltz.

**DELEGATE SCHILTZ:** We've only made style changes here. I don't see anything that needs to be called to the attention of the committee.

**CHAIRMAN FELT:** The question now arises on the motion that when this committee does arise and report, after having had under consideration Section 11, Report Number 2 of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

**DELEGATES:** Aye

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it.
Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Report Number 2 of the Style and Drafting Committee, that it recommend the same be adopted as amended.

**CHAIRMAN FELT:** Members of the committee, you now have before you the question that when this committee does arise and report, after having had under consideration Report Number 2 of the Committee on Style and Drafting, as amended, it recommend the same be adopted. All in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it.
The gentleman, Mr. Eskildsen.

**DELEGATE ESKILDSEN:** Mr. Chairman. For the information of the members of the Committee of the Whole, we'll be going in and out of the Committee of the Whole this morning, and because we have other business under the business of the Committee of the Whole, such as the Natural Resource Proposal, today, we'll ask leave of the committee and I'll make the motion now so that you understand. I so move that we pass consideration at this sitting of any further business under Committee of the Whole, Mr. Chairman.

**CHAIRMAN FELT:** Mr. Eskildsen. Are you—your explanation sufficient for your purposes?

**DELEGATE ESKILDSEN:** I think so.

**CHAIRMAN FELT:** The question before the committee is to pass consideration, at this time, of any further business to come up in Committee of the Whole. All in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it.
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move the Committee of the Whole rise in final report.

**CHAIRMAN FELT:** Without objection, members of the committee, we will revert to the end of Report Number 1 of the Committee on Style and Drafting.
Mr. Schiltz.

**DELEGATE SCHILTZ:** Mr. Chairman. I think I neglected to offer the entire Report Number 1. So, at this time, I move that when this committee does arise and report, after having had under consideration Report Number 1 of the Style and Drafting Committee, it recommend the same be adopted.

**CHAIRMAN FELT:** Mr. Schiltz. Would it satisfy you and parliamentary procedure if we combined in one motion to adopt Reports 1 and 2, as amended?

**DELEGATE SCHILTZ:** Fine.

**CHAIRMAN FELT:** We can take it at this time. Members of the committee, the question arises on the motion that when this committee does arise and report, after having had under consideration Reports Numbers 1 and 2, as amended, of the Committee on Style and Drafting, it recommend the same be adopted. All in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it.
Mr. Eskildsen.

**DELEGATE ESKILDSEN:** I move that we rise in final report and refer Constitutional Revision Number 2 and Suffrage and Election Number 1 proposals to Style and Drafting.

**CHAIRMAN FELT:** Do what, Mr. Eskildsen? Reports Numbers 1 and 2—

**DELEGATE ESKILDSEN:** Excuse me, to Order of Business Number 5.

**CHAIRMAN FELT:** Final Consideration of Proposals. Does everyone understand? Mr. Schiltz, where are you? Perhaps—would you like to just make a brief statement as to the effect of this motion, because it's the first time the motion has come before the Convention.

**DELEGATE SCHILTZ:** I thought I was all through, Mr. Chairman.

**CHAIRMAN FELT:** Well, I could have called on someone else. I didn't notice you were busy. Mr. Murray, would you like to discuss this, as you're Chairman of the Committee on Rules.

**DELEGATE MURRAY:** Mr. Chairman. The explanation is that, after we have completed the work in the Committee of the Whole on the reports from Style and Drafting and the reports have been adopted section by section, the articles will be referred to Order of Business Number 5 and voted on finally there without debate. And that will be, for those who are experienced with legislative action, a third-reading Order of Business. And Mr. Eskildsen's motion is to that effect. Now, today, because we have not announced that we have any business under Order of Business Number 5, we will not be going to that Order of Business. We will be going to Order of Business Number 1 and advancing directly to Order of Business Number 10 again, so we will not be casting this. And you should know a day in advance that you will be required to be here to vote under Order of Business Number 5, because that's the roll call stage and everybody will want to cast their votes at that time, I'm sure.

**CHAIRMAN FELT:** The clerk will now reread the motion that is before us, which, in essence, is to have the committee rise and finally report and to refer these two reports to Order of Business Number 5, Final Consideration of Proposals. I believe, with that explanation, I won't have to ask the clerk to reread it. Does anyone have any questions about what you're about to vote on? If not, all those in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.
(No response)

**CHAIRMAN FELT:** The Ayes have it.

(Committee of the Whole Chairmanship assumed by Mr. Brown)

**CLERK HANSON:** "March 1, 1972. Mr. President. We, your Committee of the Whole, having had under consideration Report Number 1 on Suffrage and Elections of the Committee on Style and Drafting, recommend as follows: That Section 1 be adopted; Section 2 be adopted; Section 3 be adopted; Section 4 be adopted; Section 5, Section 6 be adopted. On the Report Number 2 on Constitutional Revision, Committee on Style and Drafting recommends as follows: Section 1 be amended, line 12, page 5, of the Style and Drafting Report on Constitutional Revision by reinserting the words 'an unlimited'; that Section 1 be adopted as amended; that Section 2 be amended in line 18, page 5, of the Style and Drafting Report on Constitutional Revision by inserting the words 'an unlimited'; that Section 2 be adopted as amended; that Section 3 be adopted; Section 4 be adopted; Section 5 be adopted; Section 6 be adopted; Section 7 be adopted; that Section 8 be adopted; Section 9, subsection 1, be adopted; that Section 9, subsection 2, be amended by placing a period after the word 'state' on line 12, page 8, and strike the remaining language on lines 12, 13 and the first two words on line 14; that Section 9, subsection 2, be adopted as amended; that Section 9, subsection 3, be adopted; that Section 10 be amended on line 4, page 9, by inserting the words 'the office of' before the words 'for governor'; that Section 10 as amended be adopted; that Section 11 be adopted; that Report Number 2 of Style and Drafting on Constitutional Revision be adopted as amended; that the Report on Suffrage and Elections be adopted; that the Committee pass consideration at this sitting of other business on General Orders;

that the Committee rise and report and that Suffrage and Election and Constitutional Revision Proposals be placed on Order of Business Number 5. Signed: Felt, Chairman."

**DELEGATE FELT:** I move the adoption of the Committee reports.

**VICE-PRESIDENT BROWN:** Members of the Committee, you've heard the motion of Mr. Felt. All those in favor, say Aye.

**DELEGATES:** Aye.

**VICE-PRESIDENT BROWN:** Opposed

No response

**VICE-PRESIDENT BROWN:** So ordered. Now, be on Order of Business Number 10.

**DELEGATE ESKILDSEN:** Mr. President. I move the Convention resolve itself into Committee of the Whole for the purpose of handling business under General Orders.

**VICE-PRESIDENT BROWN:** You've heard the motion of Mr. Eskildsen. All in favor, say Aye.

**DELEGATES:** Aye.

**VICE-PRESIDENT BROWN:** Opposed, Nay.

No response

**VICE-PRESIDENT BROWN:** So ordered.

(Committee of the Whole Chairmanship assumed by Mr. Felt)

**CHAIRMAN FELT:** Mr. James.

**DELEGATE JAMES:** I would like to report myself present.

**CHAIRMAN FELT:** Mr. James is present. Committee of the Whole will please be in order. I wish to personally congratulate the members of the committee. And perhaps a few words now might be in order. I think that we might acknowledge that we're moving along faster and that this is to be expected as we all become accustomed to the handling of business in Committee of the Whole. And that we have a rare opportunity, I believe, today, due to the fact that our Committee on Natural Resources has done an excellent job, both by being reasonably brief and by being accurate, that we can complete this work today. And we will give everyone full opportunity, certainly, to discuss this matter, which is of such great importance to all of us and to all the people in Montana. I might just mention that yesterday, since we dealt with an article on Judiciary, the lawyers necessarily were quite active, and I'm sure that they probably have tired tonsils today; and that my glasses aren't going to function very well when the lawyers stand up today. And to commend those who may be thinking of being candidates for higher office, if they can make their political statements elsewhere rather than on the floor. And we will follow the following procedure which, I believe, has been agreed upon: that after the clerk has read the history and title of the article, we will call upon the Chairman of the committee to make a general statement reviewing the report before any motions are before the body and then we will explain the remaining procedure when we have completed that. But I think it's important that we realize the assumptions under which we do operate here. One is that everyone present can not only read and write, but can think, and that they have read the report. Second, that our committee system functions; that the members of this committee have given the detailed thought to this consideration that each of us gave to the matters that came before our substantive committees; that there is some sort of presumption that they have given it due consideration and are now presenting it to us. So we'll now have the clerk read the history and title of the article.

**CLERK HANSON:** "Montana Constitutional Convention, 1971-1972, Natural Resources and Agricultural Committee Proposal—"

**CHAIRMAN FELT:** Mr. Clerk, have you completed—

**CLERK HANSON:** "Natural Resources and Agricultural Committee Proposal Number 2; date reported, February 18, 1972. Louise Cross, Chairman; Gysler, Vice-chairman. Be it proposed by the Natural Resources and Agricultural Committee that there be a new article on environment and agriculture to read as follows:" Mr. Chairman, title and history.

**CHAIRMAN FELT:** The delegate, Mrs. Cross.

**DELEGATE CROSS:** Mr. Chairman.

**CHAIRMAN FELT:** Mrs. Cross.

**DELEGATE CROSS:** I move that when this committee does arise and report, after having under consideration the new Article on Natural Resources and Agricultural Proposal Number 6, that it recommend that the same be adopted.

**CHAIRMAN FELT:** Mrs. Cross. I had understood—did you wish to make a general statement before presenting your motion? Your motion that you made then went, then, to Section 1—subsection 1, was it?

**DELEGATE CROSS:** No, I still wish to make a statement.

**CHAIRMAN FELT:** Well, what was the motion again, then? Do you wish to make any motion at all before you make your statement?

**DELEGATE CROSS:** No, I don't think so.

**CHAIRMAN FELT:** All right; we'll hear your statement then, Mrs. Cross.

**DELEGATE CROSS:** Thank you, Mr. Chairman. Also, thank you for considering a novice at this parliamentary procedure. Fellow delegates, of the 10 reports which have come out of the substantive committees of this Constitutional Convention, the shortest is that of the Natural Resources and Agriculture Committee. Most of the 29 pages in the report are concerned with the contents, the letter of transmittal, explanatory notes and appendixes. The articles themselves are relatively short. One is entitled "Environment and Natural Resources" and the other, "Agriculture". Both of these deal with areas of vital concern to us Montanans. The first is divided into four sections: protection and enhancement, reclamation, water rights and cultural resources. The second is divided into two parts: the Department of Agriculture and the right to special levies. After many hours and days of deliberations and listening to witnesses and trying to digest all sorts of information and testimony, the committee was able to agree on all but one section of the articles. That one was the one on the environment, itself. The committee split on this, seven to two; and those two of us were outvoted as to the content of the statement and the explanation [is] in the notes in this report. I also have the dubious distinction of being the only committee Chairman who was not able to get out a minority report of my own wording. I disagree with the statement on page 6, that we are recommending the strongest constitutional environmental section of any existing state constitution. It is chiefly to this issue that I speak today. I consider Sections 2 and 3 not only weak, but possibly restrictive in a direction which is not readily apparent. When the committee dealt with the section on water and water rights and the Department of Agriculture, they needed no convincing of their importance. Water is at a crucial point in Montana history. Use it or lose it. Agriculture is in a tenuous position because it is rapidly losing its voice and its representation in legislative halls. On these two points, the common danger was recognized. But the issue of the environment is an issue of recent vintage. Constitutionally speaking, it is a new concept, and we must begin at point zero. After a month of trying to come to grips with the issue, I began to feel that environment must be like the proverbial weather; we all talk about it, but doing something about it is a horse of a different color. It is the important issue of our time. In this area, we can look ahead; and if we put our minds to it, we can really do something great and good for those future generations to which we give lipservice. There probably isn't a person in this room who would deny that taking care of our environment isn't good sense. How we ultimately deal with the issue will be the measure of our sincerity. I have spoken twice on this issue before committee hearings, and I have urged the adoption of a strong article. The fact that the language I proposed was not adopted by the majority of the committee is not what is important. What is important is that we face up to this responsibility here on Convention Floor and adopt language that will do the job. Yesterday, our President reminded us that this Constitution is not for today or even for tomorrow, but must stand the test of time. He reminded us that we must be leaders. Project yourselves 50 years into the future, if you will, and from that vantage point look back at us here in Convention Hall. Ask yourselves if we are seizing our moment in history to do something that makes us great. Pollution in any form is an expensive business. A year ago, it was estimated that water pollution is costing the United States 12.8 billion dollars per year in damages. The United States Environmental Protection Agency estimates that air pollution costs the nation some 16.1 billion dollars a year in material losses. I have not seen figures that tell us what air and water pollution costs the State of Montana, but it must be a considerable sum. The sad part of this is that we recognize the problem, but so far, we have seemed unable to do anything about it. We even seem unable to learn the bitter lessons other states have [illegible] to learn. If you were listening to the news last night, you would have heard that West Virginia has stopped issuing permits for strip mining. It took a tragedy of a broken dam, the death of many, and the wiping out of a town, to bring the issue to a [illegible]d. One of our fellow delegates remarked that we are a crisis-oriented people. Rarely do we do anything until we are forced to do so. Coal underlines [underlies] the eastern third of this state. Do we have to wait until we have the equivalent of 20 great walls of China marching north and south from border to border, and just as useless, before we realize that we've destroyed the precious resource of a productive land? Many of our natural resources are nonrenewable; and when they are gone, the treasure of the Treasure State will also be gone. When you begin deliberations on this article and when we begin with the inevitable amendments to it, ask yourselves some questions. Why do people come to visit this state, anyway? Are our streams and rivers worth anything to us? Does the air we breathe contribute to our health and general welfare? Do we have to leave everything up to the Legislature and hope that they will do the job? Do we, as individuals, have anything at all to say about how we can protect ourselves from pollution? Can we construct a framework within which the means and rights are provided to protect these rights? Let us exercise prudent judgment. Thank you, Mr. Chairman.

**CHAIRMAN FELT:** Thank you, Mrs. Cross. The next procedure we're going to file is to have the clerk read all of Section 1, all three subsections. There will be no motion made at this time; but we're having it read, not only for the benefit of the delegates, but particularly for those persons interested enough to come here and observe the proceedings, so that they will know just exactly what it is that's before us. After that, we will go back and take them up subsection by subsection. The clerk will now read all of Section 1.

**CLERK HANSON:** "Section 1, Protection and enhancement. The State of Montana and each person must maintain and enhance the environment of the state for present and future generations. Subsection 2. The Legislature must provide for the administration and enforcement of this duty. Subsection 3. The Legislature is directed to provide adequate remedies for the protection of the environmental life-support system from degradation and to provide adequate remedies to prevent unreasonable depletion of natural resources." Section 1, Mr. Chairman.

**CHAIRMAN FELT:** Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. McNeil.

**DELEGATE McNEIL:** Your committee presents and recommends, in its proposal, the strongest constitutional environmental section of any existing state constitution. Subsection 1 requires the state and each person, which, of course, includes corporations and all legal entities as well as individuals, to maintain and enhance the Montana environment for present and future generations. Although our committee Chairwoman does not agree that this is the strongest, no one has yet shown me a state constitution that is stronger. There is no state constitution anywhere that requires the affirmative duty to enhance the environment. In addition, the provision drafted by the majority requires that we, at least at a minimum, maintain the present Montana environment. Your committee considered, at length, an exhaustive list of descriptive adjectives to precede the word environment, such as healthful, pleasing, quality, high-quality, unsoiled, and, finally, my very own, unique, and concluded that no descriptive adjective was adequate or necessary. This was not considered by the majority to be a compromise, but rather an acknowledgement of the present Montana environment as encompassing all of those descriptive adjectives. Constitutional provisions of other states were studied, but none were considered adequate, as no other state has Montana's environment. And therefore your committee felt that the best recommendation is to require that all must maintain and enhance the Montana environment. Subsection 2 mandates the Legislature to administer and enforce the duty to maintain and enhance the Montana environment. Your committee was urged by many to detail the manner of accomplishing this duty, but the temptation to legislate in the Constitution was resisted and confidence reposed in the Legislature. To those who may lack such confidence in the elected representatives of the people, the clear and concise duty to maintain and enhance the environment cannot be contravened. Your committee considered two delegate proposals, and these were the only two that were presented that were other than the strong statement which the majority is now submitting to you, which declared in substance that the State of Montana hold in public trust the environment for the benefit of all the people. The majority felt it unnecessary to have the state hold in trust all land, including, of course, privately owned real property, for the benefit of all the people of the state in order to accomplish the protection of our environment. In addition, the majority felt it unwise to experiment by incorporating into the Constitution, a "public trust" which was not clearly defined to the committee—and of all of the persons who testified before our committee, there were not two who used the same definition for that phrase; and which phrase is not contained in the Constitution of any other state; and which exists, in its infancy, in only two states by legislation. Subsection 3 mandates the Legislature to provide adequate remedies to protect the environmental life-support system from degradation. The committee intentionally avoided definitions, to preclude being restrictive. And the term "environmental life-support system" is all-encompassing, including but not limited to air, water and land; and whatever interpretation is afforded this phrase by the Legislature and courts, there is no question that it cannot be degraded. I might further add that that phrase, "environmental life-support system", was an essential part of both of the delegate proposals referring to the public trust and has been incorporated in the majority proposal. Subsection 3 further mandates the Legislature to provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. Although it is recognized that some nonrenewable natural resources are to be consumed, this provision permits the Legislature to determine whether the resources [are] being unreasonably depleted and requires preventive remedies. The committee considered proposals which would give individuals a right to sue without the necessity of showing some damage. The majority concluded that Montana's present law providing for class action, under which litigation is presently pending involving multitudes of claimants against a single alleged polluter, is adequate. However, the majority feels that this is not a compromise, because the majority feels—the majority proposal—requires the Legislature to provide whatever remedies are necessary to prevent degradation and to prevent unreasonable depletion. The majority of the committee believes that this is the best article for the protection of the Montana environment for its people. I might also add, parenthetically, that there was distributed to our desks this morning an example of a right to sue as incorporated in North Dakota, and it says: "Any person has a right to a healthful environment." The majority felt that the use of the word "healthful" would permit those who would pollute our environment to parade in some doctors who could say that if a person can walk around with 4 pounds of arsenic in his lungs or $SO_2$ gas in his lungs and wasn't dead, that that would be a healthful environment. We strongly believe—the majority does—that our provision—or proposal is stronger than using the word "healthful". And this proposal, further, would provide the right to sue anybody, through appropriate legal proceedings, and then modify it by saying "subject to reasonable limitation as the Legislative Assembly may provide". The majority feels that our subparagraph 3 does precisely this. It requires the Legislature to provide adequate remedies and leaves it, from that point, to the Legislature. Thank you.

**CHAIRMAN FELT:** The delegate, Mr. Murray.

**DELEGATE MURRAY:** Mr. Chairman. I move that when this committee does rise and report, after having had under consideration Section 1, subsection 1, of Proposal Number 6, that it recommend the same be adopted.

**CHAIRMAN FELT:** Mr. Murray is making these perfunctory motions in order to relieve the members of the committee of that extra chore, and not for the purpose of speaking on these motions. So the matter before the committee at this time is subsection 1 of Section 1, and a motion has been made that we adopt it as it appears in the committee report. This is now open for discussion. I might just say—before I recognize you, Mr. James, I'd like to call upon Delegate Scanlin to undertake a small chore on behalf of the Chair. I would like you to keep a scoresheet, please, of the number of times that lawyers are recognized and rise. And for those purposes, today, we will not count either Mr. McNeil or Mr. Brazier as attorneys, since they will be speaking as members of the committee. In the event any of them speak longer than 5 minutes, put an asterisk after their names please, Mr. Scanlin.

Mr. Scanlin.

**DELEGATE SCANLIN:** Mr. Chairman. I feel that an apology is due for any untoward thoughts I had toward my fellow delegates who may be members of the legal profession, and I apologize.

**CHAIRMAN FELT:** The apology is certainly accepted, if you feel it's necessary. I might say that the "Traveling Martin Trophy" might be presented to Delegate Foster. I believe he remained totally silent yesterday, and I believe now that Delegate Harper might be putting in his bid to achieve it for today.

Delegate Harper.

**DELEGATE HARPER:** Mr. Chairman. I just want to say I know, or least I hope, this is being done in fun, about the lawyers. I think we all recognize that we are dealing, under the Constitution, with a legal document—basic law. I just simply rise to say that I have appreciated very much a good many of the comments that the lawyers have made. I am not familiar with law. The first thing I do in a law case is go to a lawyer, and I think most of the rest of us feel that way. So, I would like to just say that I don't share in the idea that the lawyers are any less members of this group and should be restricted in any way in their speaking, any more than any of the rest of us. I just felt constrained to say that. I'm not running for any office, that I want any lawyers' vote. (Laughter)

**CHAIRMAN FELT:** Thank you for the defense of the attorneys. They can, perhaps, take care of that, too. (Laughter) The point is that there's a course given in law school on water law, and I don't think we need the whole course today. (Laughter)

Mr. James.

**DELEGATE JAMES:** Yes, Mr. Chairman. I only spoke once yesterday, and one sentence. I am not a lawyer. I have nothing against lawyers; and I have no daughters, so I have no worries. (Laughter) I was just kidding, Jim, really.

**CHAIRMAN FELT:** That's a relief.

**DELEGATE JAMES:** I would like to amend line 10 of Section 1. And despite Mr. McNeil's statement there—I hadn't heard it before I proposed this amendment—I would like to remove "the" and insert "a clean and healthful"; delete "of the state" and insert "for the protection and enjoyment of present and future generations". To me, on reading the first section there, it seemed rather bland. I felt as though these adjectives perhaps would strengthen the article. I would like to read a couple of lines from a poem in the *Saturday Review*. "Man has kicked away his birthright; now we find, to our despair, we have fouled our lakes and rivers, we have fouled our very air. It is time to face the music; it is time to be aware." These words from a poem by Francis Hadge, "Warning from Main Rivers." I've been to all parts of the United States, and having visited most of these sister states, I am glad that Montana still has relative virginity, if one can have such a thing.

**CHAIRMAN FELT:** The gentleman, Mr. James, has moved to amend subsection 1. And we will have the clerk reread the amendment, and then we'll permit further discussion if anyone wishes.

**CLERK SMITH:** "Section 1, Protection and enhancement, subsection 1. The State of Montana and each person must maintain—"

**CHAIRMAN FELT:** Mr. Clerk, I think you can just read the motion as it was presented to us. Do you have a copy of it there?

**CLERK SMITH:** Yes. "Mr. Chairman. I move to amend Section 1, subsection 1, page 3, line 10, by striking the word 'the' following the word 'enhance' and the words 'of the state for'—"

**CHAIRMAN FELT:** Now, just pause a minute while I get that down. Anybody want that reviewed?

**DELEGATES:** Yes.

**CHAIRMAN FELT:** Review that again please.

**CLERK SMITH:** "—page 3, line 10, by striking the word 'the' following the word 'enhance' and the words 'of the state'—"

**CHAIRMAN FELT:** This is another strikeout?

**CLERK SMITH:** Yes.

**CHAIRMAN FELT:** Strike the word "the", which is the first word on line 10; then he also strikes the words "of the state for" following the word "environment". Proceed, Mr. Clerk.

**CLERK SMITH:** "—following the word 'environment' and inserting in lieu thereof the following words: 'a clean and healthful' following the word 'enhance' and inserting 'for the protection and enjoyment of' following the word 'environment'."

**CHAIRMAN FELT:** Now, that was a little bit difficult to catch, so we'll do it again if anybody would like. Oh, they're giving out copies now? Fine.

The gentleman, Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman. As Vice-chairman and one of the seven who approved this report, I resist the motion to amend, and the reasons were stated by Mr. McNeil when he went through the comments on our section. I would certainly hope that, before people amend things, that they take time and look to see what they're amending and if there's any committee comments in regard to it. We feel that—or I feel, anyway, that this amendment weakens, not strengthens, this article.

**CHAIRMAN FELT:** Mr. Blaylock.

**DELEGATE BLAYLOCK:** Mr. President. They said they were handing this out, but what's being handed out is not—

**CHAIRMAN FELT:** Yes.

**DELEGATE BLAYLOCK:** —so I'd like to have that read in its entirety as it's amended. Forget the striking out, just read the thing.

**CHAIRMAN FELT:** I think that's fine. I thought they were handing out the same one; it turns out it's a different one that's being distributed. There is another amendment which has been submitted. Well, perhaps they're both being handed out, Mr. Blaylock, then. Another amendment has been offered to subsection 1 of Section 1. The author did not include his name, so we do not know who it is. Possibly he will feel that the proposal that is before us now from Mr. James covers his point too, but if not, would he please let his identity be known so that we'll be prepared for it.

Mr. Kamhoot.

**DELEGATE KAMHOOT:** Mr. Chairman. I am a member of the Natural Resources Committee, one of the seven on the majority report here; and I, too, resist any change in Section 1. Now, we had more than 95 separate witnesses before us, over 165 appearances. Many, many times, members of the committee, including myself, asked people what "healthful" meant. No one could define it. This was one of the reasons, as Delegate McNeil said, that we took it out—because no one knows what it is. The question came up many times, of course, about this social security for lawyers. That was used many, many times in our committee by using words that no one could define. I think that after four weeks of extensive work, night sessions, hundreds of witnesses before us, I'm sure that we have heard every argument that can be proposed to have changed this article from what we came out with. I believe it is the best; it's the strongest. There's no state that has as strong a one as this. For those that would like it stronger, I think they should think about this a little, because they may come out with one that's not as strong as this one. I thank you, Mr. Chairman.

**CHAIRMAN FELT:** The delegate, Mr. Campbell.

**DELEGATE CAMPBELL:** Mr. Chairman, would Mr. Kamhoot yield to a couple of questions, please?

**DELEGATE KAMHOOT:** Yes, I'll yield.

**DELEGATE CAMPBELL:** You are familiar, Mr. Kamhoot, with the Illinois provisions?

**DELEGATE KAMHOOT:** Some.

**DELEGATE CAMPBELL:** And you feel those are weaker than the provisions that you have recommended in your committee?

**DELEGATE KAMHOOT:** Well, I think so.

**DELEGATE CAMPBELL:** Then, would you be for adopting the weaker provisions that would give the citizens the right to sue as regulated by the Legislature?

**DELEGATE KAMHOOT:** Repeat that, would you, Bob?

**DELEGATE CAMPBELL:** Section 2 of the Illinois provision provides a citizen shall have the right to sue as defined by the Legislature. Would you be in favor of adopting this weaker provision?

**DELEGATE KAMHOOT:** Now, Bob, I don't have Section 2 of the Illinois Constitution before me.

**DELEGATE CAMPBELL:** I see.

**DELEGATE KAMHOOT:** I've read volumes and volumes of other state constitutions, so I don't know exactly what it says.

**DELEGATE CAMPBELL:** All right. I will read you, then, Section 2.

**CHAIRMAN FELT:** Mr. Campbell, do you wish to speak?

**DELEGATE CAMPBELL:** Yes, I do.

**CHAIRMAN FELT:** Yes, let's do that if you have something to add.

**DELEGATE CAMPBELL:** Okay. Thank you, Mr. Chairman. I rise in support of Mr. James' motion to amend the Section 1. I feel that the present section, as presented by the committee, stating that the State of Montana will maintain an environment is absolutely worthless. What this says, in effect, instead of being the strongest in the nation, is that there is no type of standard whatsoever to define this environment. "A clean and healthful environment" is not defined. It would be defined by the Montana Supreme Court and the Legislature that we are hoping will initiate effective controls. All of this says that they will enhance the environment. It does not describe whether it is good environment, bad environment, polluted environment, or anything. I think all it means is that the Legislature, in the future, will not prohibit the citizens' right to breathe, regardless if it's clean air, bad air, or anything else. I think that "clean and healthful" is a positive step forward. I think that the Supreme Court and the Legislature can work towards this goal, which is in the Illinois Constitution, which is recommended for the North Dakota Constitution. I think the enjoyment and protection of this also is a meaningful addition to this Section 1. I don't feel that this is the strongest in the nation, and certainly, if adopted without the amendment, I feel that it would be an insult to the people that did want something effective in this Constitution. Thank you, Mr. Chairman.

**CHAIRMAN FELT:** The delegate, Mr. Anderson.

**DELEGATE JOHN ANDERSON:** I am also a member of the committee and one of the seven who recommends the article that is before us, and I believe that Section 1 of the article points it out very clearly to us. I think that we have a most unique situation here in our great State of Montana. We, presently, I think, have one of the best environments—perhaps of any state in the Union. I feel that subsection 1 of Section 1 spells it out very clearly that we must maintain this quality environment that we have—and not only maintain it, but improving it; as the article says, to enhance it. I personally object to the amendment of this section.

**CHAIRMAN FELT:** The delegate, Mrs. Robinson.

**DELEGATE ROBINSON:** Mr. Chairman. I will probably be up many times today, because I believe that the Environmental Article is probably the most important thing we will be dealing with in this Constitutional Convention. I rise in support of Mr. James' amendment simply because in the presence—the proposed Section 1, there is no qualifying adjective used for the environment. Mr. Kamhoot brought up the question of what is healthful and what is quality or what is clean. These two adjectives have been used in most of the Environmental Article and environmental law throughout the United States. I refer you to the *Revised Codes of Montana,* Title 69, which uses the words, "healthful". The Federal Environmental Protection Act also uses the words "clean and healthful". There will be no question about what these words mean, because these words will be subject to a great deal of litigation. I think it's clear that we do not want to maintain the present environment, for example, in Missoula or Columbia Falls or other places, since the rate of death by cancer is twice as high in Butte and Anaconda as it is anywhere else in the State of Montana. I think we need these qualifying adjectives to enable the Supreme Court to interpret what kind of environment we want. Without these qualifying adjectives, the court is going to have a very hard time.

**CHAIRMAN FELT:** The delegate, Mr. Rebal.

**DELEGATE REBAL:** Mr. Chairman. I resist Mr. James' amendment. I believe "clean" and "healthful" to be comparative in nature. Cleaner than what, or more healthful than what? Thank you.

**CHAIRMAN FELT:** The delegate, Mr. James. Do you wish to close?

The delegate, Mrs. Bates.

**DELEGATE BATES:** Mr. Chairman. I would like to ask a question here of Delegate James.

**CHAIRMAN FELT:** Will the gentleman yield?

**DELEGATE JAMES:** Yes, I will, Mrs. Bates.

**DELEGATE BATES:** Mr. James, when you mention "to protect and improve", does this mean that in future years that perhaps a building or a business that might go up would not improve the environment to many people. Could it stop future building and things of this type?

**DELEGATE JAMES:** My amendment does not say "improve"; it says "for the protection and enjoyment".

**DELEGATE BATES:** Oh, "enjoyment". I beg your pardon; I thought it was "improvement".

**DELEGATE JAMES:** You know what enjoy means, don't you? (Laughter)

**CHAIRMAN FELT:** The gentleman, Delegate Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman and delegates. I rise in support of Mr. James' amendment. It seems to me that, when Charles Lindbergh was with us the other day, he was saying some very timely things. When I was introduced, thinking maybe he would dwell on his past solo performances. I was very moved by his future orientation. Nothing is as important that we will do here as guarantee the future of our citizens, and those who come from all over this country and the world, to enjoy the sense of cleanliness and the health of our environment in Montana. I think it does strengthen it to put these words in. I am for his amendment.

**CHAIRMAN FELT:** The delegate, Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman. It seems to me that Delegate James is on the right track in this matter. If we take the words "maintain and enhance"—maintain means to keep it the same or at least not to have it lessened; enhance is to augment or increase. But we then are—according to the language in subsection 1, we are to maintain or improve environment of the State of Montana for future generations. But if you have no qualifying adjectives to describe what the objective is, it seems to me that you're just uttering a few meaningless generalities. So I support the amendment of Delegate James.

**CHAIRMAN FELT:** The delegate, Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman. I think we are all searching for exactly the same thing; it's just a matter of what language to use. I would like to direct your attention to the fact that Delegate James' amendment deletes the language "of the state". The majority felt very strongly that the environment of this state describes what we have in Montana. It's the clear, unpolluted air near Bob Marshall wilderness; it's the clear water and the clear air in the Bull Mountains; and it is the stench in Missoula. But that is the Montana environment. Delegate Campbell said there is no standard. There is a standard. It is the present environment of this state. You take out the words "of the state", and we take out what is our present environment and substitute "clean and healthful"—the majority felt this would permit degradation of the present Montana environment to a level as defined in Illinois, which may be clean and healthful. And our intention was to permit no degradation from the present environment of Montana and affirmatively require enhancement of what we have now.

**CHAIRMAN FELT:** The delegate, Mr. Foster.

**DELEGATE FOSTER:** Mr. Chairman, fellow delegates. It looks like one day was as long as I could stay seated. I wish to only point out two things. One, Delegate Anderson in his statement used the words "quality environment" in stating that he supported the majority position. I wish you to note that there is no such modifier to "environment". Delegate McNeil used "present environment", which is certainly not in the majority proposal. I submit that the arguments that are being used in support of the majority proposal, in fact, are not in that proposal. Thank you, Mr. Chairman.

**CHAIRMAN FELT:** Does the gentleman, Mr. James, wish to close?

The delegate, Mr. Brazier.

**DELEGATE BRAZIER:** Before you vote on this, fellow delegates, I would call to your attention a couple of circumstances which I think you ought to be aware of. Although we all seem to know and be aware that we're drafting a Constitution, I think we sometimes overlook the implications. Now, the reason that the majority of your committee, in its wisdom, saw fit not to put qualifying adjectives in the Constitution is that this provision is destined to be interpreted by the Montana Supreme Court. The Supreme Court is going to decide what this Constitution means; and if it decides wrong, if it decides something conservative that you don't like, it's locked in. You can't change the Constitution. Whereas, if you put the qualifying adjectives in the legislation, which subsection 3 of this proposal contemplates, if the Supreme Court, in your opinion, abuses its discretion and makes a conservative interpretation, it is subject to the checks and balances of being overruled by the Legislature. But if you put it in this Constitution, you lock it in—there's no chance to correct it. We've had one Constitutional Convention in 80 years—modify [modified] the present Constitution 37 times in 80 years. And I would point out, as you may have noticed in the discussions, that certain other statutes were called to our attention by Mrs. Robinson. All I would point out is they are just that, statutes. They are subject to interpretation by the courts, and the courts are subject to the checks and balances of the legislative action of Congress or of those states. Please bear that circumstance in mind during your deliberations. Thank you, Mr. Chairman.

**CHAIRMAN FELT:** The delegate, Mr. Cate.

**DELEGATE CATE:** Mr. Chairman, fellow delegates. The environment, of course, I think, is one of the most important things facing us here at this Convention. And throughout the land, young people are asking us to do something about the environment, because they're the ones that are going to have to live with it. And apparently, the public trust doctrine which was first advocated—

**CHAIRMAN FELT:** Mr. Cate, try to stay on these adjectives that we're debating.

**DELEGATE CATE:** Right.—has been rejected. And therefore I feel it's imperative that we have a—what we do adopt—be as strong as possible. And speaking as a lawyer, I think that it adds something to Section 1 to say "clean and healthful". I can envision going into court to prove that something is not healthful, but I can't envision going into court to prove "maintain and enhance the environment". I can prove that the sulphur that's being emitted from the steam plant in Billings, which is—there's an article on that in today's *Gazette*, I can prove that that's not healthful. And I can prove that that's not clean, in a court of law. But I don't know how you would approach this thing otherwise if you don't have some type of adjective to hang your legal proceeding on. And I know that those people who were on this committee are as concerned as I am to have an effective provision. And I really feel that it is necessary to have these adjectives "clean and healthful", and I would support Mr. James' amendment. Thank you.

**CHAIRMAN FELT:** The delegate, Mr. Heliker.

**DELEGATE HELIKER:** Mr. Chairman. I submit to the majority of the delegates here, who are not lawyers, that when we nonlawyers have to make up our mind about language which is very crucial in terms of how it will be interpreted by the courts, that we had better consult experts in whom we have confidence. I, therefore, asked Professor John McCrory, who teaches administrative law at the University of Montana Law School, for this opinion on the language of Section 1. I'd like to read you his response. He said, and I quote: "Contrary to the view of the committee majority, I believe that descriptive adjectives are necessary for guidance for interpreting the Constitution, to insure that present problems are not perpetuated. The words 'clean and healthful' have common usage and meaning which would furnish such guidance." Thank you.

**CHAIRMAN FELT:** The delegate, Mr. Campbell.

**DELEGATE CAMPBELL:** Mr. Chairman. I would just like to say to Delegate McNeil that the people in Missoula are not satisfied with maintaining the present stench; that in the past, they have had the benefit of being able to afford to buy property on your Flathead Lake, to sit there free of pollution. This is rapidly changing. The pollution that they had in Missoula that they did not have in Polson is slowly creeping into the Flathead Valley, as you well know. If you know, in the Bob Marshall wilderness area, if you've flown in, there aren't many canyons left in this state that are not slowly filling up with the haze of industrial filth. And I think that "clean and healthful" is a minimum standard to put [in]. Mr. Brazier mentioned this would go before the Supreme Court. Certainly, I know it will, regardless of the language we use. Certainly, the strongest language we could use in this provision is "a clean and healthful environment". As I understand, Mr. McNeil, this was your original thought in the committee before you changed your mind on it. And I would say that your first thought was the best thought, and support Mr. James. Thank you.

**CHAIRMAN FELT:** Delegates, I would—we are going to have to switch tapes in a moment. I think we've had a pretty thorough discussion on the meaning of these words. If someone has something new to add, why, let's get it down and do it in a minute or two, and then we can switch tapes.

The gentleman, Mr. Loendorf.

**DELEGATE LOENDORF:** I have no specific comment, but when I heard the statutes cited, I sent a page to get the book; and I would just like to share with the Convention what it says. It seems to go far beyond either the majority proposal or Mr. James' amendment. It makes it the responsibility of the State of Montana to use all practical means to assure for all Montanans safe, healthful, productive, and aesthetically and culturally pleasing surroundings; attain the widest range of beneficial uses of the environment without degradation, risks to health or safety, or other undesirable and attendant consequences. And the final paragraph states, "The Legislative Assembly recognizes that each person shall be entitled to a healthful environment and each person has a responsibility to contribute to the preservation and enhancement of the environment."

**CHAIRMAN FELT:** Does the gentleman, Mr. James, wish to close?

The delegate, Mr. McCarvel.

**DELEGATE McCARVEL:** I wonder if Mr. James would yield to a question.

**CHAIRMAN FELT:** Does the delegate, Mr. James, yield?

**DELEGATE JAMES:** I'll yield, Joe.

**DELEGATE McCARVEL:** Just how broad is this "clean and healthful"? What does it enhance?

**DELEGATE JAMES:** Well, I think I should let Mr. Loendorf answer you there, or I think he has answered you. I think perhaps my statement was not inclusive enough, although I will settle for that if the delegates will. I think Jerry made a very good argument, and I think Delegate Heliker's statement there—McCrory took care of this very well.

**DELEGATE McCARVEL:** Thank you. Mr. Chairman.

**CHAIRMAN FELT:** Mr. McCarvel.

**DELEGATE McCARVEL:** Just before we convened this Constitutional Convention, there was an article in the *Montana Standard* which stated that a doctor had come up with his findings that smoking of cigarettes or cigars was just as detrimental to those that inhaled the expended smoke as the ones that smoked them themselves. So, I'm just wondering if I, as a nonsmoker, could take someone who is a smoker and charge him with polluting the environment under this clean and healthful air. That is all, Mr. Chairman.

**CHAIRMAN FELT:** The Convention will stand at ease while we change tapes.

**CHAIRMAN FELT:** Please be in order. We are continuing the discussion of the amendment of Mr. James.

The delegate Mr. Conover.

**DELEGATE CONOVER:** Mr. Chairman. Will Mr. James yield to a question?

**CHAIRMAN FELT:** Will the gentleman, Mr. James, yield to a question?

**DELEGATE JAMES:** Yes, I will, Mr. Conover.

**DELEGATE CONOVER:** Mr. James, on this "clean and healthful", I like the words real well; what concerns me is this zoning of the cities, where they're spreading out into our rural areas and buying, say, different plots of land, and they'd get a home there. And if I happen to be located pretty close and I have cattle, the first thing, he takes in a suit to me for the smell. Then I'm in trouble, am I?

**DELEGATE JAMES:** I really don't know. I suppose if you had a feedlot in an area that was adjacent to a community and became so objection-

I think perhaps some action could be taken. I think at present, we take action against public nuisances if such arise, and I'm sure they do.

**DELEGATE CONOVER:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Conover, do you wish to speak on the amendment?

**DELEGATE CONOVER:** Will Mr. George James yield to another question?

**CHAIRMAN FELT:** Do you yield to another question?

**DELEGATE JAMES:** Yes, I will, Mr. Chairman.

**DELEGATE CONOVER:** Mr. James. What I'm referring to is that a lot of our city folks want to get away from a congested area, so they move out 3 or 4 miles, where we have been located—us ranchers—for, you might say, generations. And this is what's happening in some areas, and I'm wondering what this clean air will do to our agriculture.

**CHAIRMAN FELT:** Does the gentleman, Mr. James, wish to respond to that question?

**DELEGATE JAMES:** Yes, I think that the courts will take these things into consideration. I don't think the courts have ever been unrealistic or, by their nature, should they be unjust. So I think that all these things—we do try to consider balance when setting up these things. I, as one, wouldn't want to go overboard on environment, nor would I want to go overboard the other way. But I do think that it's time—we know what's happened in other states from coast to coast, in other countries—and I think we have to consider the future generations. We have to consider the people now, and we are doing that. Surely, you're aware that actions have been taken in many cases where there have been health hazards and pollutants. I am sure that all the attorneys in the body, and anyone that's read the papers, know that actions have been taken. This is just a statement of principles, a guideline, and I agree with Mr. McNeil that we have a common cause here and it's just a matter of how we state it. Perhaps under the majority proposal here of the committee, you could ask Mr. McNeil the same question.

**CHAIRMAN FELT:** Does the gentleman, Mr. James feel that he has closed?

**DELEGATE JAMES:** I was just trying to satisfy Mr. Conover. I didn't know I was closing.

**CHAIRMAN FELT:** No, I wasn't sure either, but I thought perhaps you had.

And the gentleman, Mr. Hanson.

**DELEGATE ROD HANSON:** Mr. President, would Mr. Loendorf yield to a question, please?

**CHAIRMAN FELT:** Will Mr. Loendorf yield?

**DELEGATE LOENDORF:** Yes.

**DELEGATE ROD HANSON:** Jerry, the language you read from the statute is the present statute, as I understand it. How long has that been on the books?

**DELEGATE LOENDORF:** Since 1971.

**DELEGATE ROD HANSON:** Do you know—has that been interpreted by the courts?

**DELEGATE LOENDORF:** No, it has not.

**DELEGATE ROD HANSON:** In your opinion, is that language stronger than either of what is being proposed here by the majority or the minority?

**DELEGATE LOENDORF:** It appears to be to me. I just point this out. I'm not an expert in this area, and I wasn't on this committee, but they seem to use the same words that are being proposed by Mr. James plus many others. When you say stronger—it seems to me it's more defining, anyway.

**DELEGATE ROD HANSON:** Mr. Chairman.

**CHAIRMAN FELT:** Mr. Hanson.

**DELEGATE ROD HANSON:** Would Mr. McNeil yield to a question please?

**CHAIRMAN FELT:** Will Mr. McNeil yield?

**DELEGATE McNEIL:** I yield.

**DELEGATE ROD HANSON:** Mr. McNeil. No doubt your committee looked at this during your deliberations. What is your opinion of the statute that we have now as compared to the wording in the Constitution?

**DELEGATE McNEIL:** I have no opinion on the statute, Mr. Hanson. The opinion of the majority of the committee is that maintaining and enhancing the environment of this state is the strongest constitutional statement we can make.

**CHAIRMAN FELT:** The gentleman, Mr. James. Do you wish to close?

**DELEGATE JAMES:** If there are no other speakers, I think I've said my piece, and so everyone knows how I feel. It's a matter not of objective here, because I'm sure that we all have the same objective, the same concern, the same love of our state; and I think we want to do right by our state. And so, it's just a matter of wording. And if you feel that my adjectives will help in some measure and make this law stronger, well then, adopt them. If you feel that Mr. McNeil's—in the majority proposal there—is the best thing, adopt them. What we're looking for is what's best for our state. Thank you.

**CHAIRMAN FELT:** The question now arises on the motion to amend—

**DELEGATE HARLOW:** Could we have a roll call vote? (Seconds rise)

**CHAIRMAN FELT:** A roll call vote is asked for. There are sufficient seconds. The question now arises on the motion to amend subsection 1 of Section 1. I believe you all know the words that are included in the amendment.

For what purpose does the gentleman, Mr. McNeil, rise?

**DELEGATE McNEIL:** Mr. Chairman, I rise to ask for one minute to explain my vote. I want the record to clearly reflect that I am not voting against Mr. James' amendment, but rather voting for what I believe to be the stronger statement. And I believe the entire delegation will agree that, whichever we adopt, that it is the intention of this Convention to adopt the stronger of the two. Thank you.

**CHAIRMAN FELT:** It is the Chair's understanding that the rules are that any member may explain his vote and that—unless some member objects. And the purpose of the rule, I think, is to prevent everyone from explaining their vote in case they have already talked on the motion.

For what purpose does the delegate, Mrs. Bugbee, rise?

**DELEGATE BUGBEE:** I rise to explain my vote. I think, unquestionably, that the amendment of Mr. James is the stronger Environmental Article. And that's why I'm voting for it.

**CHAIRMAN FELT:** For what purpose does the gentleman, Mr. Brazier, rise?

**DELEGATE BRAZIER:** I rise to explain my vote. I feel that, although the language of Mr. James' amendment is stronger, it properly belongs in the Legislature. And there's going to come a time when there's a big case against a big industry, and they're going to bring in some doctors from Pittsburgh to testify that it's a healthy environment back there, and our Supreme Court is going to set us back instead of forward. In other words, we'll make more progress by leaving it out.

**CHAIRMAN FELT:** For what purpose does the gentleman, Mr. Berg, rise?

**DELEGATE BERG:** I rise to explain my vote.

**UNIDENTIFIED DELEGATE:** I object.

**CHAIRMAN FELT:** An objection has been made. The question now arises on the—Did you hear an objection, Mr. Berg?

**DELEGATE BERG:** Yes, I did.

**CHAIRMAN FELT:** I thought I did. The question now arises on the motion to amend. All those in favor will vote Aye; opposed will vote No. Has every delegate voted?

(No response)

**CHAIRMAN FELT:** Does any delegate wish to change his vote?

(No response)

**CHAIRMAN FELT:** If not, the clerk will record the vote.

| | |
|---|---|
| Aasheim | Absent |
| Anderson, J. | Nay |
| Anderson, O. | Nay |
| Arbanas | Absent |
| Arness | Absent |
| Aronow | Nay |
| Artz | Absent |
| Ask | Aye |
| Babcock | Nay |
| Barnard | Absent |
| Bates | Absent |

| | |
|---|---|
| Belcher | Nay |
| Berg | Nay |
| Berthelson | Nay |
| Blaylock | Aye |
| Blend | Nay |
| Bowman | Aye |
| Brazier | Nay |
| Brown | Aye |
| Bugbee | Aye |
| Burkhardt | Aye |
| Cain | Aye |
| Campbell | Aye |
| Cate | Aye |
| Champoux | Aye |
| Choate | Aye |
| Conover | Nay |
| Cross | Aye |
| Dahood | Nay |
| Davis | Absent |
| Delaney | Nay |
| Driscoll | Nay |
| Drum | Nay |
| Eck | Aye |
| Erdmann | Absent |
| Eskildsen | Absent |
| Etchart | Nay |
| Felt | Nay |
| Foster | Aye |
| Furlong | Aye |
| Garlington | Nay |
| Graybill | Absent |
| Gysler | Nay |
| Habedank | Nay |
| Hanson, R.S. | Nay |
| Hanson, R. | Nay |
| Harbaugh | Absent |
| Harlow | Aye |
| Harper | Aye |
| Harrington | Aye |
| Heliker | Aye |
| Holland | Absent |
| Jacobsen | Aye |
| James | Aye |
| Johnson | Nay |
| Joyce | Absent |
| Kamhoot | Nay |
| Kelleher | Absent |
| Leuthold | Nay |
| Loendorf | Aye |
| Lorello | Nay |
| Mahoney | Absent |
| Mansfield | Nay |
| Martin | Nay |
| McCarvel | Nay |
| McDonough | Aye |
| McKeon | Aye |
| McNeil | Nay |
| Melvin | Aye |
| Monroe | Aye |
| Murray | Nay |
| Noble | Nay |
| Nutting | Nay |
| Payne | Aye |
| Pemberton | Nay |
| Rebal | Nay |
| Reichert | Aye |
| Robinson | Aye |
| Roeder | Aye |
| Rollins | Aye |
| Romney | Aye |
| Rygg | Nay |
| Scanlin | Nay |
| Schiltz | Aye |
| Siderius | Aye |
| Simon | Nay |
| Skari | Aye |
| Sparks | Nay |
| Speer | Aye |
| Studer | Nay |
| Sullivan | Nay |
| Swanberg | Nay |
| Toole | Absent |
| Van Buskirk | Aye |
| Vermillion | Aye |
| Wagner | Aye |
| Ward | Nay |
| Warden | Nay |
| Wilson | Nay |
| Woodmansey | Aye |

**CLERK SMITH:** Mr. President, 40 voting Aye, 44 voting No.

**CHAIRMAN FELT:** The motion is lost. There was, as I said, another motion presented. If the member who wished to present it would make themselves known, why, we'd hear it. If they do not why, we'll assume that they feel the subject was fully dealt with because it was quite similar. The question then arises on the motion to adopt subsection 1 of Section 1. All those in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN FELT:** The Ayes have it. A division has been called for.

The gentleman, Mr. Brazier, for what purpose do you rise?

**DELEGATE BRAZIER:** Mr. Chairman. I had submitted to the clerk this morning a proposed amendment to subsection 1. Apparently, it didn't come to your attention.

**CHAIRMAN FELT:** Well, I've called for your identity two or three times. It must have been you, then. If you wish that acted upon—Is that the one that inserts the word "physical"?

**DELEGATE BRAZIER:** I do, your Honor—Mr. Chairman, yeah.

**CHAIRMAN FELT:** All right. Without objection, we will eliminate the action of attempting to vote for which a division has been called, and we are back at a point at which further amendments may be offered to subsection 1 of Section 1. Hearing no objection, the clerk will read the amendment.

**CLERK SMITH:** "Mr. Chairman. I move to amend Section 1, subsection 1, page 3, line 10, of the Natural Resources and Agriculture Committee majority proposal by inserting, after the word 'the' and before the word 'environment', the word 'physical'. Signed: Brazier."

**CHAIRMAN FELT:** The gentleman, Mr. Brazier.

**DELEGATE BRAZIER:** Mr. Chairman and fellow delegates. This is nothing sinister. It's simply a housecleaning, housekeeping type amendment; and it arises at this time because, in the rush of business towards the deadline for preparing committee reports, we didn't get the communication by some people that deal in the environmental areas. Since that time, it has been called to my attention that there are, in various fields of study and administration, a number of usages of the term "environment", including such things as physical environment, cultural environment, economic environment, political environment, and so forth. And this has been borne out; I've seen some provisions in other statutes which use the word "physical environment". I merely suggest it to make sure that anybody in the future knows what we're talking about here, and that is physical environment. It is in no way limiting, in no way intended to detract from the strength of the provision. I just consider it good draftsmanship and a means of clarifying what this Constitution intends.

**CHAIRMAN FELT:** The gentleman, Mr. Cate.

**DELEGATE CATE:** Mr. Chairman. I move as a substitute amendment to strike Section 1—

**CHAIRMAN FELT:** Mr. Cate, don't use the word "substitute amendment". Either make a substitute motion or amend his motion; but if you're amending, it better relate to his motion.

**DELEGATE CATE:** I'll make a motion to amend Section 1 of the Environmental and Natural Resources provision by striking therefrom on line 8, page 3—

**CHAIRMAN FELT:** Move slowly now.

**DELEGATE CATE:** —after the words "Section 1 period", the following language: "protection and enhancement period"—through line 9, through line 10, through line 11. In other words, strike out the entire provision except the words "Section 1" and insert in its place the following language: "The State of Montana shall maintain and enhance a clean and healthful environment as a public trust. The sole beneficiary of the trust shall be the citizens of Montana, who shall have the duty to maintain and enhance the trust, and the right to protect and enforce it by appropriate legal proceedings against the trustee." I'll read that again.

**CHAIRMAN FELT:** Mr. Cate, before you do, we'll certainly permit you to offer it, if you're sure you wish to offer it at this—

**DELEGATE CATE:** I do.

**CHAIRMAN FELT:** —as an amendment to the subsection 1. Do you have it in writing?

**DELEGATE CATE:** I do.

**CHAIRMAN FELT:** Why don't you—Has it been brought forward?

**DELEGATE CATE:** It has not.

**CHAIRMAN FELT:** Why don't you do that. And would you be agreeable if we do recognize you, in a moment, to make this as a substitute motion and proceed to deal with the less far-reaching matter and—

**DELEGATE CATE:** Yes, Mr. Chairman.

**CHAIRMAN FELT:** —perhaps it'll be disposed of. And if we find, however, that this other one takes a great deal of time, why, we'll recognize Mr. Cate, because, of course, if his motion did prevail, your other one would be wiped out completely. Does anyone wish to discuss further the insertion of the word "physical", as proposed by Mr. Brazier?

The delegate, Mrs. Cross.

**DELEGATE CROSS:** Would Mr. Brazier yield to a question, please?

**DELEGATE BRAZIER:** I will

**CHAIRMAN FELT:** The gentleman yields.

**DELEGATE CROSS:** A few minutes ago, Jeff, we had some questions about the use of qualifying language, and you now propose to insert the word "physical". Doesn't that fall into the same category as the other qualifying language?

**DELEGATE BRAZIER:** I don't believe so, because I don't think it's subject to interpretation. This is merely limiting to the subject matter that we're talking about, which is our physical environment. And I don't want to leave the door open for somebody to go tearing off into our economic environment or some other place under this little wedge that they might use.

**CHAIRMAN FELT:** The gentleman, Mr. Romney.

**DELEGATE ROMNEY:** Mr. Chairman, may I ask Delegate Brazier a question?

**CHAIRMAN FELT:** Does Mr. Brazier yield to a question?

**DELEGATE BRAZIER:** I yield.

**DELEGATE ROMNEY:** Jeff, would you define "physical" as you envision it in this case? Natural, artificial—just what do you envision in the definition of physical as you use it here?

**DELEGATE BRAZIER:** Well, for the most part, it's anything that can be communicated with or identified by our six physical senses—what we breathe, what we touch, what we see.

**CHAIRMAN FELT:** All right. Is there any further discussion on the amendment?

The delegate, Mr. Heliker.

**DELEGATE HELIKER:** Would Delegate Brazier yield?

**CHAIRMAN FELT:** Will you yield?

**DELEGATE BRAZIER:** Yes.

**CHAIRMAN FELT:** The gentleman yields.

**DELEGATE HELIKER:** In your opinion, Mr. Brazier, what is excluded by the term "physical"?

**DELEGATE BRAZIER:** It ventures into other areas of government, such as politics. We're here to improve our political environment anyhow, but this has just been called to my attention, Professor Heliker, by people who deal in the area. They said they've met with confusion, and people that they've met with have tried to expand their interests and their administration beyond the physical environment, which everybody understands to be what we're after here. And they think it's a better practice to make good and certain that we don't permit that.

**CHAIRMAN FELT:** Does the gentleman, Mr. Heliker, wish to speak on the motion to amend?

**DELEGATE HELIKER:** I'd like to ask Mr. Brazier another question.

**CHAIRMAN FELT:** Will you yield to another question?

**DELEGATE BRAZIER:** Yes.

**DELEGATE HELIKER:** You've mentioned specifically, I believe, politics. I couldn't quite hear, because you didn't have your mike close enough to your mouth.

**CHAIRMAN FELT:** Could you restate the other matters, Mr. Brazier?

**DELEGATE BRAZIER:** All I can do is give you some examples that have been called to my attention. I don't claim to be an expert in these other fields myself, but there is a usage of the term—"political environment", "social environment", "economic environment", and so forth. And I just want to make certain that nobody makes an excursion into those areas as a result of what we draft on our Environmental Article here today.

**CHAIRMAN FELT:** The gentleman, Mr. Heliker.

**DELEGATE HELIKER:** May I continue my question?

**CHAIRMAN FELT:** Yes. If you wish to use questions, go ahead.

**DELEGATE HELIKER:** Well, I would ask if you couldn't be a little bit more specific in listing examples of these things. If you say social, economic, cultural environment, I'd like to know exactly what you have in mind.

**DELEGATE BRAZIER:** Anything that is not clearly identifiable or subject to categorization under physical environment. I mean to exclude everything else.

**DELEGATE HELIKER:** All right.

**CHAIRMAN FELT:** The gentleman, Mr. Burkhardt.

**DELEGATE BURKHARDT:** Mr. Chairman. As I'm listening to the discussion, it seems that a member of the committee—maybe you weren't on that committee. Were you on that committee, Jeff?—Excuse me—A member of the committee has somewhat weakened the position of the committee in their statement about not needing any qualifying words at all. And I'm thinking maybe, at some point, we'll want a chance to amend other language on this article in order to make it the strongest it can be. Thank you.

**CHAIRMAN FELT:** If there's no further discussion—

The gentleman, Mr. Harlow.

**DELEGATE HARLOW:** I am slightly bewildered by this word "physical", too, when it applies to environment. If we read the thing as the majority has maintained—that it is so elegant in its wording, that we're going to maintain a physical environment. All right, we're going to maintain a physical stench in Missoula; if we're going to maintain the blemished and eroded hillsides in western Montana, as well as eastern Montana; if we're going to maintain the erupted and corrupted land in eastern Montana as they dig up the coal—I think this word is a bad word. I think we should delete it and maintain the idea that somebody said was good and not put any extra words in here. Let's not go back on what we just said was all right.

**CHAIRMAN FELT:** The gentleman, Mr. Romney.

**DELEGATE ROMNEY:** I wish to speak briefly against the amendment offered by Delegate Brazier. I think that the use of "environment", rather than qualifying "physical environment", is better, if we're going to choose. If we have physical environment in there, it may, according to my understanding of Delegate Brazier's replies mean that cultural environment and political environment and one thing or another of that character are not included in his purview. Well, I maintain that there are ramifications of environment that are not physical, that are concerned in the matter before us. These ramifications include political environment; they include cultural environment. If I smell the stench of the Waldorf-Hoerner mill in Missoula 47 miles away in Hamilton under proper atmospheric conditions, that is a cultural environment which I am affected with, and adversely so in my opinion. Of course, I realize that we must try to reach a happy medium here so that—and I think all of us have this intention. I realize that if you kill the cow, you can't have any milk; and I don't think any of us wish to do that. But I think that we should not accept this word "physical". Another reason is that, if we can't understand what physical is here, how is the Supreme Court, when it hears a case involving it at some time in the future, going to be able to determine what we meant.

**CHAIRMAN FELT:** The question now arises on the motion to amend offered by Mr. Brazier. All those in favor will signify by voting Aye.

**DELEGATES:** Aye.

**CHAIRMAN FELT:** Opposed, No.

**DELEGATES:** No.

**CHAIRMAN FELT:** The Noes have it.

The gentleman, Mr. Cate.

**DELEGATE CATE:** Mr. Chairman. At this time, I would move to amend Section 1 by inserting the language which the clerk now has and would ask it be read.

**CHAIRMAN FELT:** Will the clerk please read the proposed amendment.

**CLERK HANSON:** "Mr. Chairman. I move to amend Section 1, subsection 1, by striking it in its entirety and insert the following: 'Section 1, subsection 1. The State of Montana shall maintain and enhance a clean and healthful environment as a public trust. The sole beneficiary of the trust shall be the citizens of Montana, who shall have the duty to maintain and enhance the trust and the right to protect and enforce it by appropriate legal proceedings against the trustees.' Signed: Cate."

**DELEGATE CATE:** Mr. Chairman.

**CHAIRMAN FELT:** The gentleman, Mr. Cate.

**DELEGATE CATE:** This is a modified public trust concept that I would like to ask you to consider at this time. From the language, you will note that it states that the State of Montana has the duty to maintain a clean and healthful environment, but it makes it a public trust. In other words, it makes it the duty of the state as a trust—the state acting as a trustee—to enhance this environment. And this has the effect of giving beneficiaries the right to enforce the trust. The next sentence says, "The sole beneficiary of the trust shall be the citizens of Montana". In other words, you would have to be a citizen of Montana in order to enforce the trust. This would take care of the comment that I've heard about hippies passing through Montana that might try and sue everybody. The rest of the paragraph says who shall have the duty to maintain and enhance the trust, which is not very different from the present language, and the right to protect and enforce it by appropriate legal proceedings against the trustee. This would give the citizen the right to sue the state to enforce the trust, not private individuals. In other words, if pollution such as is occurring in Billings, killing the life on the south rims, was occurring, a citizen would have the right not to sue the power company, but it would have the right to sue the state agency, the Board of Health, to require that they take appropriate action to protect the environment and make it clean and healthful. It takes away the argument against the public trust concept that private citizens will be harassing private individuals. Everybody here seems to agree that we need a strong environmental provision, and I think that this is the most effective and the strongest environmental provision that we could put in our Constitution at this time, considering the stage of enlightenment of some of the citizens of Montana. The public trust doctrine is nothing new. The public trust doctrine has been recognized by the United States Supreme Court since 1842. The public trust doctrine has been in our Constitution for 83 years. All the state lands are in public trust; navigable streams are in public trust; the air is in public trust; the shorelands are in public trust. It's existed in England for 800 years. The public trust is not a new concept. It is not consistent to taking a private property, as has been alleged. It is not a socialistic system—that has been alleged. It's simply an effective means of protecting the environment and is probably the only true and effective means of protecting the environment. Thank you, Mr. Chairman.

**CHAIRMAN FELT:** The gentleman, Mr. Gysler.

**DELEGATE GYSLER:** Mr. Chairman. I rise to be against Mr. Cate's proposed amendment; and in doing so, first I would like to read to you a couple of paragraphs from a letter sent to Delegate Cate by George Darrell, which I had printed and spread upon your desks approximately February 18th, I believe. "In attempting to apply these fundamental concepts of ecological understanding to a draft of an Environmental Article, we devised"—and this was Mr. Darrell and Mr. Cate, I presume—"an unorthodox concept of the public trust. I am now convinced that the prevailing, narrowly legalistic construction of public trust 'in conventional past usage' has effectively usurped the opportunity to employ the public trust concept in this different, innovative sense. Since conventional usage of the public trust concept has applied only to circumstances of actual public ownership, a different application in a new context may be subject to valid doubt as to its unintended implications to the private ownership of land. In the prevailing legal usage, then, the application of the public trust concept to achieve protection for the environment does, inadvertently, impinge upon the equally valid need to protect and reaffirm private property rights." This was not intended, and he goes on to say that the overwhelming majority of private property owners—probably 99 percent plus—are offended against by the environmental consequences of the actions, and that private property rights must be protected. I really cannot see anything good coming from this proposed amendment, and I can see an awful lot of things that could be very bad. So I request that, when the vote comes on this, that you vote against it.

**CHAIRMAN FELT:** The gentleman, Mr. Foster.

**DELEGATE FOSTER:** Thank you, Mr. Chairman. Would Mr. Gysler yield to a question?

**CHAIRMAN FELT:** Will the gentleman, Mr. Gysler, yield?

**DELEGATE GYSLER:** Yes.

**DELEGATE FOSTER:** Mr. Gysler, do you consider the article on water to be a public trust of water?

**DELEGATE GYSLER:** Mr. Foster, perhaps it could be determined that that is a public trust of water. The implications between private land and water are considerably different, and anytime you use the words "public trust"—and I would like anyone who would like to argue with the definition of a trust to go and talk to somebody in a bank or some attorney or something like this, who knows the meaning of the word "trust".

**DELEGATE FOSTER:** Thank you, Mr. Gysler.

Mr. Chairman.

**CHAIRMAN FELT:** Mr. Foster.

**DELEGATE FOSTER:** I would quote from the committee report: "All surface, underground, flood and atmospheric waters within the boundaries of the State of Montana are declared to be the property of the state." Now, my point in bringing this up is that, actually, we've proposed something in this same article which goes beyond the concept of public trust and have, in fact, declared it to be state property. There's a great deal of concern about the concept of public trust, but I feel that it should be understood that when you say "the environment", you're not stating the private property rights; you're not stating the water rights; you're not stating any of the things that we own—the buildings and this. It's strictly related to the environmental system. And the concern about the public trust in this area, I think, is unwarranted when, in fact, we realize the need for protecting water carefully. And I support the majority's proposal on water. When we realize the need for really protecting something, we come to the concept of public trust. And the real question before this Convention is whether we really believe in the concept of protecting the environment or not; because if we really want to protect the environment significantly, then we must subscribe to the concept that the public good, the public benefit, public trust—whatever you want to use for those words—must be incorporated in order to protect the environment. If we really don't want to protect the environment all that much, fine—well and good. But I think that if we really want to protect the environment, honestly and totally, well then, the only way we can do it is subscribe to a system which will allow us to protect it. And I suggest that the public trust, as proposed by Delegate Cate, which requires a person to be a citizen, is the only way to really protect the environment. So let's not kid ourselves about whether we really want to protect the environment or not. If we really want to protect the environment, this is the only way to really do it effectively; and if we don't, fine and good. Thank you, Mr. Chairman.

**CHAIRMAN FELT:** The gentleman, Mr. Rebal.

**DELEGATE REBAL:** Mr. Chairman, would Mr. Foster yield to a question, please?

**CHAIRMAN FELT:** Will the gentleman yield?

**DELEGATE FOSTER:** Gladly, Mr. Chairman.

**DELEGATE REBAL:** Mr. Foster. Is [Does] your interpretation of a public trust mean that a landowner will turn his private property over to the state, to be held by the State of Montana, for the public?

**DELEGATE FOSTER:** Absolutely not, Mr. Rebal.

**CHAIRMAN FELT:** The gentleman, Mr. Harbaugh.

**DELEGATE HARBAUGH:** Mr. Chairman. We do not have this amendment, I believe, before us in writing.

**CHAIRMAN FELT:** Yes. Would you like it read again?

**DELEGATE HARBAUGH:** Would it be possible to read it slowly enough so that we could get it down?

**CHAIRMAN FELT:** It deletes the entire section, including the words in capital letters. Then, "subsection 1. The State of Montana shall maintain and enhance a clean and healthful environment as a public trust. The sole beneficiary of the trust shall be the citizens of Montana, who shall have the duty to maintain and enhance the trust, and the right to protect and enforce it by appropriate legal proceedings against the trustee." Anyone wish it read again?

The gentleman, Mr. Harbaugh, wish to speak?

Does the gentleman, Mr. Cate, wish to close?

The gentleman, Mr. McNeil.

**DELEGATE McNEIL:** Mr. Chairman. I didn't think we were approaching the closing stage. I would like to make a few comments which the majority of the committee thoroughly considered.

**CHAIRMAN FELT:** These will be on the matter of the public trust doctrine?

**DELEGATE McNEIL:** Yes, Mr. Chairman. The committee had before it two written proposals, one submitted by Delegate Cate, number 12, and one submitted by our Chairman, Delegate Cross, number 162. Both had language comparable to this expressed provision—"The State of Montana shall maintain a clean and healthful environment"—the word "environment" must include land as well as air, water, everything else—"as a public trust for the benefit of all the citizens." The intent is clear, to protect the environment. No one is questioning that. The expressed language speaks for itself: the state shall hold all land in trust for the benefit of all citizens. This is a departure from our traditional notions of private property. It goes beyond the air, the sea, the navigable waters, and strikes right to the heart of private property ownership. I would like to refresh the memory of those delegates who attended the presentation by Mr. Charles Lindbergh. He was brought to this Convention at the request of some of the delegates. At the evening informal session in the Governor's room, he expressed his concern for maximum personal freedom, with government regulation—and I emphasize the word "regulation"—of all property, including private property. At that public meeting, several advocates of the public trust theory asked Mr. Lindbergh several questions, trying to get him to say in his answer, public trust—the magic language—is the solution. He carefully avoided recommending that doctrine. After the meeting and alone for about 15 minutes with Mr. Lindbergh, I showed him the expressed language of both delegate proposal 12 and 162. The following morning when he addressed this Convention as a whole, he used the same language recommending maximum personal freedom. However, he changed the word "government regulation" and said "with government monitoring". And I submit that there is a distinct difference. The majority proposal before you now does recommend, as did Mr. Lindbergh, government monitoring. It goes further than that and directs the Legislature to provide remedies to prevent degradation. This is anticipatory. I submit that the only difference—and refer you to the express language of this proposal, "The State of Montana shall hold the environment"—including land—"as a public trust for the benefit of all the citizens." I submit that this is a substantial change in our body of law and urge you to vote against it. Thank you.

**CHAIRMAN FELT:** I would like to ask Mr. Cate a little question for clarification. Did you intend to delete subsections 1, 2 and 3 entirely?

**DELEGATE CATE:** Yes. Mr. Chairman, I believe that this one section, as proposed, would take care of the entire environmental situation.

**CHAIRMAN FELT:** Fine. The language before us didn't make it entirely clear, but that is clear enough now.

The delegate, Mr. Arbanas.

**DELEGATE ARBANAS:** Mr. President, fellow delegates. Very often the words that you use about something are filled with emotion. And we have two very emotional words here—"the private property" and "public trust". Mr. McNeil said it strikes right at the heart of the issue, because these are opposed to each other. And I submit, of course, that this is the way it would appear. Maybe we're using the wrong words. It seems to me that there are other words that get at the heart of the matter better than either of these two. I'd rather use something like "common stewardship" or "shared responsibility". I don't think anyone would say that the right to private property is unlimited and